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Version: Version of Record

Link(s) to article on publisher's website:
<http://dx.doi.org/doi:10.21954/ou.ro.00004a29>

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**Black People and Criminal Justice
in England and Wales:
A Study on Bail.**

Kadifa Williams LLB, MA.

**A thesis submitted for the degree of Doctor of Philosophy
at the Open University, Applied Social Sciences.**

September 1999.

AUTHOR NO. M7063420
DATE OF SUBMISSION, 15 SEPTEMBER 1999
DATE OF AWARD, 17 JULY 2000

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Abstract

The disproportionate rate of adverse police-black encounters, instances of unfair and unequal treatment by the police, in addition to the over-representation of black people in the total and remand prison population raises questions about the nature and extent of discrimination and racism in the criminal justice system. Reasons for the apparent differential treatment of black people in the criminal justice process remain contested. Much research on 'race' and criminal justice issues has produced contradictory findings and attempts to isolate a 'race' effect in criminal justice decision-making has been difficult. Using both quantitative and qualitative methods, this thesis explores issues of 'race', racism and criminal justice focusing on bail and remand. From a statistical analysis of data from a bail survey at two north London magistrates' courts, it is argued that black males are remanded in custody at a higher rate than their white counterparts and over-represented among those remanded in custody when compared to their proportion in the general population. Overall, even when significant factors such as seriousness of offence and age are taken into account, unexplained racial differences in bail decision-making remain. An analysis of qualitative data from black defendants and criminal justice practitioners supports the proposition that discrimination operates within the bail system and extends this argument to other stages of the criminal justice process.

This thesis also examines how issues of racism and criminal justice have been 'explained' theoretically. From a critical examination of key theoretical positions of neo-conservatism, critical criminology and left realism, it is argued that criminological theorising may never be able to fully 'explain' issues of racism/discrimination. It is further argued that notwithstanding the important insights to the debate put forward by critical criminology, it still does not go far enough in such 'explanations', while neo-conservatism and left realism paint a distorted picture. Drawing on several existing themes from critical criminology, the notion of 'virtual criminality' is suggested as a way forward.

For my two sons with love.

Stay strong – and always remember your roots.

Acknowledgements

The completion of my Ph.D. thesis, 'Black People and Criminal Justice in England and Wales: A Study on Bail', has been a thoroughly demanding and challenging experience and many people have helped me to accomplish it in different ways. I am grateful to the following members of staff at the Open University who have had key roles in enabling its advancement:

- Dr. John Muncie, (Ph.D. Supervisor) Senior Lecturer in Criminology and Social Policy, The Faculty of Social Sciences, The Open University – thanks for his advice and positive support throughout my research, and for his painstaking assistance and perseverance with numerous aspects of its development, particularly with 'writing up';
- Dr. Eugene McLaughlin, (Former Acting Ph.D. Supervisor) Senior Lecturer in Criminology and Social Policy, The Faculty of Social Sciences, The Open University – thanks for his help and constructive comments, and for taking such a keen interest in my progress;
- Dr. Andrew Bertie, Senior Software Designer, Centre for Educational Software, The Open University – thanks for his untiring help with data processing, statistics and computing without which the full range of the quantitative analysis would not have been possible; and
- The late Michael Wilson, Senior Lecturer in Research Methods, The Faculty of Social Sciences, The Open University – thanks for his help with the initial statistical methods.

Thanks also to the following for their help with computing:

Richard Adams, Training and Support Team Manager, Academic and Administrative Computing Services, The Open University;

Sokari Ekine, freelance IT Trainer;

Selena Featherstone, Database Manager, Open University Development Office, formerly of Academic Computing Services, The Open University;

Samantha Jones, User Services Assistant, Academic and Administrative Computing Services, The Open University;

Sue Lacey, former Secretary in Social Policy, The Faculty of Social Sciences, The Open University.

Tav Moor, Senior Sales Executive, Forums Division, ICM Telecoms, London W1.

I would also like to thank all those who agreed to be interviewed for this research, Jenny Bennett and Geni Stott for transcribing the interview data, and the following members of the 'Panel of experts' on the severity of bail conditions:

Sandra Graham, Attorney-at-Law, Gifford Haughton Thompson, Jamaica (formerly Barrister of 14 Tooks Court, Middle Temple London, EC4);

Peter Herbert, Barrister, 14 Tooks Court, London, EC4 (formerly of 15 Gray's Inn Square, London WC1);

Elizabeth Joseph, Barrister, Emmanuel Chambers, London WC1 (formerly of 2 Garden Court, Middle Temple, London EC4);

Kenneth MacDonald, Queen's Counsel, Matrix Chambers, Gray's Inn, London WC1 (formerly Barrister of 2 Garden Court, Middle Temple, London EC4);

Icah Peart, Barrister, 2 Garden Court, Middle Temple, London EC4; and

Edward Rees, Queen's Counsel, Doughty Street Chambers, London WC1 (formerly Barrister of Doughty Street Chambers, London WC1).

Thanks also to the following:

Association of Black Probation Officers;

Roger Blackmore, Staff Tutor, The Faculty of Technology, London Region, The Open University;

Ann Boomer, former Senior Secretary in Social Policy, The Faculty of Social Sciences, The Open University;

Catherine Bruce, Manager, Research Degrees Team, Research School, The Open University;

David Clover, IT Manager, The Faculty of Maths and Computing, The Open University, formerly of Academic Computing Services, The Open University;

The Commission for Racial Equality;

Anne Downes, Secretary for Quality Assurance, Pro-Vice-Chancellor's Office, The Open University, formerly of Higher Degrees Office, The Open University;

Dr. Felicity Edholm, former Staff Tutor, The Faculty of Social Sciences, London Region, The Open University;

Equalities Unit, formerly Race Equality Unit, Islington Council, The London Borough of Islington;

Graham Fillingham, The Justices' Chief Executive, Haringey Magistrates' Court, sitting at Highgate, North London;

Alan Gooch, former Chief Clerk of the Court, Highbury Corner Magistrates' Court, North London;

Jacky Green, Office Manager, The Faculty of Social Sciences, The Open University;

Pauline Hetherington, Senior Secretary in Social Policy, The Faculty of Social Sciences;
The Open University;

Inner London Probation Service, Highbury Corner Magistrates' Court, North London;

Victor Jupp, Principal Lecturer and Head of Sociology, The University of Northumbria;

Brendan Kelly, Solicitor, Eve Wee (Solicitors), London E 13, formerly of Clinton Davis
and Co. (Solicitors), London E5;

Legal Action Group;

Dr. Gail Lewis, Lecturer in Social Policy, The Faculty of Social Sciences, The Open
University;

Rita Little, former Administrator, The Faculty of Social Sciences, The Open University;

Nick Lloyd, Training and Support Help Desk Co-ordinator, Academic and Administrative
Computing Services, The Open University;

Dr. Judy Lown, Staff Tutor, The Faculty of Social Sciences, London Region, The Open
University;

Dave Meara, Head of Online Applications, Academic and Administrative Computing
Services, The Open University;

Middlesex Probation Service, Haringey Magistrates' Court, sitting at Highgate, North
London;

Sadie Miles, Training and Support, Academic and Administrative Computing Services,
The Open University;

The National Association for the Care and Resettlement of Offenders;

Doreen Pendlebury, former Secretary in Social Policy, The Faculty of Social Sciences,
The Open University;

Planning Department, Islington Council, The London Borough of Islington;

Police and Powers Unit, Policing and Crime Reduction Group, The Home Office;

Simon Rae, Institute of Education Technology, The Open University, formerly of
Academic Computing Services, The Open University;

Ellen Rashdi, Research Advisor, Research School, The Open University;

Regeneration Policy Unit, Chief Executive's Service, The London Borough of Haringey;

Research and Intelligence Unit, Strategic Policy and Regeneration Division, The London
Borough of Hackney;

Chris Rowley, Staff Tutor, The Faculty of Maths and Computing, London Region,
The Open University;

Dr. Esther Saraga, Staff Tutor, The Faculty of Social Sciences, The Open University;
Sue Searle, Faculty Clerk, The Faculty of Social Sciences, The Open University;
Society of Black Lawyers;
Roger Stevens, Offenders and Corrections Unit, Management of Correctional Systems,
Research and Statistics Directorate, The Home Office;
Strategic Planning, Development and Equalities Unit, Haringey Council, The London
Borough of Haringey;
Diane Sutton, Mail and Server Support Team, Academic and Administrative Computing
Services, The Open University;
Nina Tiagi, Senior Lecturer in Law, The Business School, South Bank University;
Danny Waite, Technician, The Faculty of Social Sciences; The Open University; and
Teri Walton, Training and Support, Academic and Administrative Computing Services,
The Open University.

I am indebted to Professor Adedokun A. Adeyemi, Department of Public Law,
University of Lagos, Nigeria, whose criminology lectures inspired my early interest in this
field. I am also grateful to Hugh Beresford-Webb, Consultant, Clinton Davis and Co.
(Solicitors), London E5, my principal when I was an articled clerk at Clinton Davis, whose
meticulous legal training has made a long-lasting impression.

Thanks also to Stella Dadzie, Kadeena Dedi, the late Sylvia Ome Erike, the late
Lee Kane, Noreen Payne, Chris Taylor, and to my students on D315 Crime, Order and
Social Control and previously on D310 Crime, Justice and Society at the Open University.
I would also like to thank Dr. Heather Suckling for her care and encouragement, and to
wish her good luck for her retirement and future ventures.

Many thanks to my two sons for their support, understanding and inspiration while
I was on my 'mission' to complete this work.

Finally, special thanks to Grand Master C. K. Chang for his invaluable guidance.

K. Williams LLB, MA.
September 2000

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Introduction

*Many rivers to cross
But I can't seem to find
My way over.
Wandering, I am lost
As I travel along
the white cliffs of Dover.*

*... Many rivers to cross
But just where to begin
I'm playing for time.
There've been times
I find myself
Thinking of committing
some dreadful crime.*

*... Many rivers to cross
And its only my will
That keeps me alive.
I've been licked
– washed up for years –
And I merely survive
because of my pride.*

(Jimmy Cliff)

A great distance has still to be travelled before the criminal justice system can be confidently seen to be fair, just and free from racism throughout its operation.

(Vivien Stern, NACRO, *New Law Journal*, 30 March 1990)

This thesis examines issues of 'race' and racism in relation to the treatment of black people in the criminal justice system with particular reference to bail. The question of differential treatment on the grounds of 'race' in the criminal justice system has long been raised because of the disproportionate rate of adverse contacts of black people with the police and the overrepresentation of black people in the prison population, and especially in the remand prison population, as evidenced in the crime and prison statistics (see Chapters 2 and 5). Reasons for this remain contested. Previous studies on 'race' and criminal justice have tended to produce contradictory findings and have been fraught with

methodological inadequacies. As a result the isolation of a 'race' effect in criminal justice decision-making has proved difficult. Nevertheless some research using sophisticated techniques of statistical analysis has supported the proposition that there are racial differences in the treatment of black people in the criminal justice process (see Chapters 2–3, and 5).

A custodial sentence is the current ultimate sanction available for courts for breaches of the criminal law, however, the composition of the prison population reflects not only the sentences passed by the courts, but also the actions and decisions of the police, criminal justice agencies and practitioners. The increasing number and increasingly disproportionate over-representation of young and adult black offenders in prison in England and Wales are key factors which give rise to the strong suspicion that black people are subjected to discriminatory practices in the criminal justice system, and a major impetus for allegations of racism in relation to the criminal justice process and its outcomes (see, for example, Hood, 1992: 3; Gelsthorpe, 1996: 130; Mhlanga, 1997: 4–5). This over-representation is particularly pronounced among women (Home Office, 1992a: 19) and remand prisoners (Home Office, 1992a: 19; see Chapter 5).

The Home Office has only published figures showing the ethnic breakdown of the prison population since 1985 with coding of ethnic origin corresponding to that used in the EC Labour Force Survey. Concern has been expressed about the manner in which prison statistics are reported by the media and the dangers of any over-simplified interpretation of prison statistics, for example, when information on sentencing is not taken into account (see Walker, 1987b: 202).

Prison statistics from 1985–1989 show that the total number of black male prisoners increased from 8 per cent to 11 per cent, and females from 12 per cent to 20 per cent of the total prison population (Home Office, 1985–89). By the late 1980s, the disproportionate number of young black people in residential care and penal institutions was marked,

amounting to 37 per cent of the total in the latter (Pitts, 1996: 258). In 1991 when the fieldwork for this research commenced, the adult rate of imprisonment was about the same for whites and South Asians males but nearly 7 times as high among black males. For young male offenders the rate was substantially lower for south Asians as compared to whites, but 5 times as high for blacks as compared to whites (see Smith, 1994; Home Office, 1991).

In order to determine the extent of the representation of the various ethnic groups in the total and remand prison population, useful comparison can be made to official statistics quantifying the general population (see also Chapter 5). Here the prison population is compared to the Census 1991 which classified the general population (males and females) as follows: 94.5 per cent white, 1.6 per cent black, 2.7 per cent South Asian and 1.2 per cent Chinese and Other (Office for National Statistics). However, in 1993 a new ethnic classification system was adopted for prisoners congruent with that used for the Census of Population 1991 (Home Office, 1993: Footnotes, Table 9.1) as follows: 'White', 'Black', 'South Asian', 'Chinese & Other', 'Unrecorded'. This means that figures prior to 1993 are 'not directly comparable' with figures from 1993 (Home Office, 1996: Footnote 1).

In 1991–1993, black males were over-represented in the prison population whereas white males were under-represented. The proportion of Asian males almost exactly corresponded to their proportion in the general population. Black females were heavily over-represented in the prison population, whereas Asian females were slightly under-represented and white females were heavily under-represented (Home Office, 1991–93; Office for National Statistics). In 1991, almost 50 per cent of black females were sentenced for drugs offences as compared to 15 per cent of white female prisoners (Smith, 1994: 1057). Many drugs 'mules' are from Africa or the Caribbean and not British citizens (see Maden *et al.*, 1992; *The Guardian*, 8 and 10 November 1992).

Furthermore, there is some evidence that sentences imposed on both African-Caribbeans and Asians are disproportionately long, although some difference may be accounted for in terms of offence type and the number of previous convictions (Home Office, 1992a: 21, see also NACRO, 1986; and the Howard League, 1989) and according to plea. In relation to the latter, one study found the proportion of sentences of over 3 years received by offenders pleading not guilty was 'significantly higher' for black and Asian adults than for whites, when all relevant variables were controlled for (Hood, 1992: 202).

Foreign nationals who would not normally be resident in the UK form a significant proportion of the prison population, a higher proportion being from minority ethnic groups (Home Office, 1995: 123). When the distinction between UK and foreign nationals became possible, the usefulness of prison statistics was enhanced (Home Office, 1998: 9). After excluding foreign nationals, in 1995, 13 per cent of the total prison population was from minority ethnic groups (Home Office, 1996a: 21, 23). Out of the general male population with British Nationality (aged 15–64), overall, only black males were over-represented in the prison population when compared to the general population (by 10 times). Out of young male offenders in 1995, again, young black males were the only minority ethnic group over-represented. Both young and adult black females were the only groups over-represented in the female prison population when compared to the general population (Home Office, 1995: 123–4, 133).

Another useful means of measuring the disproportion of black offenders in prison is by comparing incarceration rates of the different ethnic groups with their rates in the general population: excluding under-16 year olds and foreign nationals, in 1995 per 100,000, the incarceration rate was 1,049 for black people, as compared to 134 for whites, 104 for south Asians, and 280 for Chinese and Other. Longer sentences received by minority ethnic groups and their different age structures partially explain these differences

(Home Office, 1995: 128–9). Overall, this clearly shows that black people aged over 16 are heavily over-represented at a rate of almost 8 times that for white people. By 1997, based on the mid-1997 population estimates by the Office of National Statistics and the 1991 Census, there was 7 times (12.3/1.7) the proportion of people classified as ‘black’ and 1.5 times (6/3.9) the proportion of people classified as ‘Asian/Other (including Chinese)’ in the total prison population as in the general population (Home Office, 1997; Home Office, 1998: 40).

Whilst the over-representation of black people in the prison population appears incontrovertible, explanations for this imbalance remain contested and the subject of much debate. As Reiner has pointed out it has ‘become the single most vexed, hotly controversial and seemingly intractable issue in the politics of crime, policing and social control’ (Reiner, 1989: 5; see also 6; and Chapter 4). Smith has further asserted, ‘it provides striking evidence of something that needs to be explained’ (Smith, 1997: 720). Moreover, as Mhlanga has observed, in view of the ‘continuing gap’ between the proportion of black and white people being drawn into the criminal justice process, and especially the penal system, the question remains as to whether this results from:

proportionately more black than white people committing offences or offences of a particular kind, or whether it is the result of racial bias in the administration of criminal justice.

(Mhlanga, 1997: xvi; see headnote Chapter 7)

Essentially the debate on the underlying reasons for the apparent disproportionate black representation in the prison population continues to centre on the question as to whether black people are more *criminal* or are more *criminalized*? In addition to the effect of possible discriminatory policing and prosecution, discriminatory practices by the probation service and court personnel, and the under-representation of black people among criminal justice personnel, the impact of court decision-making has also been identified as pivotal:

Given that people are imprisoned by a decision of magistrates or crown court judges, the question immediately begged by the prison statistics is whether these figures represent discriminatory sentencing or higher black crime rates.

(Hudson, 1989: 25)

Nevertheless Smith (1997: 752) contends that black over-representation in prison can be largely explained because the rate of black offending is higher than white although the usual caveat is added that this arises because 'discrimination against black minorities *interacts* with high rates of offending by those same groups' (Smith, 1997: 754 emphasis added).

Further research has raised questions about the disproportionate number of black people in prison and rates of offending in terms of various legal factors such as seriousness of offence and previous convictions. Firstly, the over-representation of black offenders in the sentenced prison population has been linked to the serious nature of offences committed (Dholakia and Sumner, 1993: 39 citing Hood: 1992; Walker: 1988; Hudson: 1989; Smith, 1997). The high proportion of black people arrested for indictable offences is in a ratio similar to their ratio in the prison population, and the disproportionate number of black people arrested for some offences are more likely to result in a custodial sentence, 'in particular street robberies and the sale of cannabis' (Hood, 1992: 4).

The tendency for black offenders to be over-represented among those sentenced for Robbery and drugs offences is shown in the prison figures (see, for example, Home Office, 1995: Table 9.5, 134). This is significant in terms of reflecting predominant stereotypes of black criminality which in itself may make black defendants more vulnerable to discriminatory and harsher treatment in the criminal justice process (see Chapters 1, 9 and 11).

The distribution of the prison population in the various offence groups reflects discretionary decision-making by the police and CPS in relation to prosecutions, as well as

the courts' sentencing practices. Arguably, as Gelsthorpe has pointed out, 'wide discretion has been the hall-mark of the system' (Gelsthorpe, 1996: 116).

Secondly, the pattern of previous convictions for prisoners is significant in terms of arguments relating to the over-representation of black people in prison as a result of their being 'pushed up the tariff' of available punishments earlier than their white counterparts:

The ultimate proportion of people from different ethnic groups in custody may therefore, to some extent, be shaped by the point on the scale (sometimes called a tariff) of alternatives to custody at which their sentences are placed.

(Hood, 1992: 22)

Thus black offenders initially may tend to have heavier sentences imposed than white which can lead to the earlier imposition of even heavier sentences. Fludger's (1981) study of borstal in the mid-70s supported this contention in relation to young black offenders, and in NACRO (1986) it was claimed that black offenders go to prison earlier in their criminal careers than whites (see also Chapter 9). In Hudson (1989) it was found that African-Caribbeans given immediate imprisonment had fewer previous convictions than their white counterparts, and that generally the former have a shorter tariff than the latter, largely missing out on conditional discharges and fines, and in the case of males, probation also. Shallice and Gordon (1990) argued that 'similar recommendations' for defendants with different histories and previous convictions suggested a differential and more punitive treatment for black defendants who may, therefore, 'be moved "up tariff", because of the intervention of probation officers, more quickly than white defendants' (Shallice and Gordon, 1990: 23).

Thirdly, the higher proportion of black defendants pleading not guilty may also partly explain black over-representation in the prison population. Some studies have confirmed that sentences may be harsher where defendants plead not guilty either because probation was less likely to be ordered in such cases (Hudson, 1989a; Moxon, 1988), or because this

leads to a larger proportion of black defendants being tried at the Crown Court which increases the likelihood of custodial sentences (Moxon, 1988; Walker, 1989; Hood, 1992). Even where 'guilty' pleas may attract a 'discount', sentences imposed on black defendants are likely to be longer than for white defendants in such circumstances (Hood, 1992).

Various non-legal social and cultural factors may also be influential in explaining ethnic differences in crime rates and the composition of the prison population. Age has been identified as one of these factors. A self-report study on young people found that the offending rate for African-Caribbeans and whites was similar, whereas the Asian rate was significantly lower (Graham and Bowling, 1995). However, Smith has argued that notwithstanding the wide use of the self-report method by criminologists and psychologists to investigate criminal behaviour and conduct disorders, 'there has never been good evidence to show that it is an adequate basis for making quantitative estimates' (Smith, 1997: 729).

The seriousness of the position for young black males in England and Wales was highlighted by Vivien Stern, director of NACRO:

On current trends, nearly one in ten young black men will have received a custodial sentence before his 21st birthday. This is an appalling prospect for black people and for society as a whole.

(New Law Journal, 30 March 1990: 431)

Gelsthorpe argues that age is an important factor explaining the over-representation of young black people in terms of differential crime rates since on average the black population is younger than white so that a larger proportion of the former falls within the 'peak age' of offending which according to Home Office (1995a: 19) was 18 for males and 14 for females (Gelsthorpe, 1996: 130–1). Yet young age alone cannot account for the over-representation of black people in prison because the vast majority of persons in custodial institutions are *adults*, and the proportion of black people in adult prisons is

larger than in young offender institutions (Home Office, 1986–1997; see, for example, Hood, 1992: 4).

As Gelsthorpe has pointed out, whether or not black people are more criminal in terms of rates of offending has proved difficult to establish. Socio-economic factors such as unemployment, poor educational achievement, and residence in high crime areas, which characterize African-Caribbean males, have so far not been taken into account in research studies. Notwithstanding the issue of offending rates, research has suggested that there are key differences in the ‘trajectory’ of black and white people through the criminal justice process which can be explained ‘by a mixture of legal and social factors and prejudice’ (Gelsthorpe, 1996: 131).

The existence of ‘culture conflict’ between the values of immigrants’ parents and the host community has also been put forward as one reason for increases in African-Caribbean and Asian prisoners (Hood, 1992: 4). However, by 1991, nearly half (46 per cent) of the members of minority ethnic groups were born in the UK, with an increasing proportion being born to parents who were also born in the UK. Increasing numbers were also of ‘mixed’ ethnic origins (Home Office, 1992a: 8). Furthermore, ‘the slackening of familial networks of control’ could also be an important factor leading to expected ‘delinquent responses to lack of conventional opportunities’ (Hood, 1992: 4). Gilroy has stressed the importance of the perception of the black family as a ‘black matriarchy’ in ‘breeding deviancy out of deprivation and discrimination’ (Gilroy, 1987a: 109–10). These arguments reflect the prevailing perception of the black family as a single parent family, mostly headed by women, in partly explaining black criminality, especially among young people.

Unemployment has also been identified as a key factor leading to the disproportionate number of black people in prison. For example, in the early 1980s,

Gordon argued that custodial sentences are more likely to be imposed where defendants are unemployed:

One result of racism – in unemployment – in turn leads to another – in the courts.

(Gordon, 1983: 113)

In the mid-1990s, it was reported that the Lord Chief Justice, was also of the view that ‘social factors such as high unemployment among blacks could partly explain’ the over-representation of black people in prison (*The Guardian*, 1 July 1995).

Thus although the over-representation of black people in prison raises suspicions that this is a result of racism in the criminal justice system, the exact way in which this has evolved is complex and contested. Whilst some research has suggested that discrimination in the criminal justice process is cumulative (see, for example, Reiner, 1989, 1993; Gelsthorpe, 1996: 133–5), Smith has argued that this has yet to be clearly demonstrated (Smith, 1997: 754–5). Discrimination at different stages of the criminal justice process may be either direct or indirect, and pinpointing either type, and particularly instances of direct or ‘pure’ discrimination (Reiner, 1992; see also Fitzgerald, 1993:8–12; Chapter 3), may be difficult though not impossible (see Hood, 1992; Mhlanga, 1997; see Chapter 3)

This thesis sought to uncover evidence of discriminatory treatment of black people at the stage of the criminal justice process when court bail is considered. Bail in all criminal proceedings is to be granted in accordance with the *Bail Act* 1976 and the court rules which came into force on 17 April, 1978 (see Appendix 1), and also relevant legislation (see Chapter 5). From an examination of *Prison Statistics* 1991–97 it is clear that the number of black people among remand prisoners has increased – from 11 per cent in 1991 to 14 percent in 1997 – and that the proportion of black people in the remand prison population has also slightly increased – from 7 times (11.2/1.6) in 1991 to 8 times

(13.0/1.7) in 1997 (see Tables 5.1–5.6). Thus it can be clearly established that black people are over-represented in the remand prison population when compared to the general population. However, the underlying reasons for such over-representation by black people among remand prisoners and the increase in their numbers cannot be deduced from these raw figures.

This thesis deconstructs these remand statistics (see Chapter 5) and unravels the complexities of possible evidence of discrimination in bail decision-making. The analysis of quantitative and qualitative data in this study on bail suggests that there are racial differences in the treatment of black people in the bail system. Such differences may partly be accounted for by various relevant factors besides ‘race’ such as seriousness of offence and/or age, but the suggestion remains that there is a high likelihood that ‘race’ is a significant factor leading to unequal outcomes for black defendants (see Chapters 7–10). Unexplained racial differences remain even when a range of legal and social factors are taken into account (Chapter 8).

Bail was chosen as the focus of this study on ‘race’ and criminal justice, not only because this particular area of research has been neglected, but also because the majority of remand prisoners are untried, and, therefore, should still be deemed innocent until proven guilty in the eyes of the law. Furthermore, in the late 1980s the plight of black people on remand in custody was slowly emerging as a matter of key national concern. Whilst previous research has sometimes addressed the question of bail and black people, none has been carried out specifically in this area.

In order to do so it was clear that the sample of defendants should be relatively large and include a sizeable proportion of black defendants. Following Northumbria Police (1991), MacLeod (1991) and Hood (1992), it became apparent that some sophisticated statistical techniques would also be needed in order to ‘weigh’ a wide range of possible determinants (see Chapter 5). In addition to a quantitative analysis, qualitative research

involving interviews with defendants and officials involved in the bail system provided a valuable insight into court decision-making processes which purely statistical evidence can never be able to reveal (see Chapter 6). Observations of court-room interactions also proved useful. Commenting on cases observed in Leeds' magistrates' courts in their study of under 35 year old males' experience and perception of, and attitudes towards the police, Jefferson and Walker (1992) specifically pointed out that this could be appropriate in relation to bail:

Our overriding conclusion was that racially discriminatory behaviour was not an obvious or noticeable feature of court-room interactions. However, we thought bail and custodial remands, of which we observed few, might repay a closer look.

(Jefferson and Walker, 1992: 90)

This thesis was being completed in the wake of the release of the Macpherson Report on the Stephen Lawrence murder inquiry in February 1999 (see Chapters 2 and 11) and the bombings of the predominately black and Asian areas of Brixton, south London, and Brick Lane, East London, in April 1999, when, arguably racism in Britain 'went up another gear'. Definitional issues about racism still persist (see Chapter 11). Some writers have referred to 'racisms in the plural' rather than 'racism in the singular' (Gilroy, 1987a: 38; Hall, 1980; Jefferson, 1991; Keith, 1993b: 250; see Chapter 11). Arguably racism is like a 'shapeshifter'. As Sivanandan has pointed out, 'racism does not stay still; it changes shape, size, purpose, function' (Sivanandan, 1983: 2). For the researcher, a black woman who has had both a personal and political interest in 'race', racism and criminal justice since a teenager in the late 1960s, the London bombings in Spring 1999 appear to represent the further manifestation of 'menacing demons' of racism onto the streets of Britain.

It may be that the distance to be travelled to reach a criminal justice system which is 'fair, just and free from racism' is like a never-ending road, and given the prevailing

political climate we may never be able to cross all the 'rivers' needed to get there (see chapter headnotes). This thesis, which falls into four parts as described below, explores the position of black suspects and defendants in the criminal process with particular reference to bail, and puts forward a theoretical perspective which helps to explain why justice for black people is so elusive.

Part 1 addresses the ways in which 'law and order' has been 'racialised' in England and Wales and presents a literature review of previous research which has examined the nature and extent of discriminatory practices by the police and in the courts. It also explores various criminological approaches which have sought to 'explain' theoretically the promulgation of discrimination/racism in the criminal justice system.

An overview of issues relating to bail is set out in Part 2 which examines relevant statistics and previous studies which have included findings specifically on bail. It also describes the quantitative and qualitative methodology employed in this research.

Part 3 provides details of findings from the initial data analysis of the bail survey and those from the multivariate analysis using the 'logistic regression' statistical technique. In addition to the quantitative results, it also sets out the findings on bail and criminal justice issues from an analysis of the qualitative data drawn from interviews with black defendants and criminal justice officials. Findings on the full range of outcomes from defendants' bail applications and details of conditions of bail are also presented.

The continuing disproportionate contact between black people and the criminal justice system and the proliferation of unequal criminal justice outcomes for black suspects, defendants and victims are reconsidered in Part 4 which also 'explains' these in terms of the notion of the 'ideological construction' of 'race', racism and crime. A summary and reassessment of the main findings of the research is also presented with suggestions for further research on 'race' and criminal justice issues.

Part One

The Racialization of Law and Order

Introduction

A literature review of writings on 'race' and criminal justice is addressed in Part One: 'The Racialization of Law and Order'. Chapter 1 outlines arguments about the social construction of the criminal 'other', and traces its development from certain sections of the indigenous population in the nineteenth century to contemporary racially-constructed criminal 'others', 'folk devils', scapegoats, and stereotypes of 'black criminality'. The criminal justice system is identified as a key institution which reproduces racial differences in society by the 'racialization' of law and order and the manufacture of the disproportionate criminalization of black people.

Chapter 2 explores aspects of the relationship between the police and black people which appears to have been, and continues to be, characterised by conflict and hostility. It examines the proposition that black people have been singled out for special treatment by the police which results in the disproportionate rate of adverse police-black contact and criminalization of black people at the first point of contact with the criminal justice system. It examines relevant official statistics and studies on police procedures, practices and discretionary powers in relation to possible discrimination in the case of black suspects and defendants, and outlines reasons underlying black people's loss of confidence in the police.

The question of whether black people are subjected to discriminatory practices in the courts is addressed in Chapter 3. It examines studies in this area and identifies various methodological problems in such research particularly in relation to difficulties in isolating a 'race' effect in court decision-making. This chapter also discusses the racial structure of juries, criminal justice agencies and practitioners and raises the issue of the under-representation of black people in some of these areas.

Chapter 4 discusses how racism/discrimination in the criminal justice system have been 'explained' theoretically. It focuses on the criminological approaches of neo-

conservatism, critical criminology and left realism. Each try to develop an understanding of the enigma of 'black criminality' and the official response to it but from different perspectives. Critical criminology appears to present the most relevant 'explanation' of discrimination in the criminal justice process, however, it is possible that this and other existing theory does not go far enough to reveal its full implications.

Chapter 1

The Construction of 'Race' as a Criminal 'Other'

A criminalised subject category, "Blackness", is one racist construction of the British Criminal Justice System ... It is an invidiously powerful categorization that connotes an imagery of "Black criminality" which achieves empirical realization in particular times and at specific places.

(Keith, 1993b: 245)

*Well, I feel like a stranger in the land where I was born,
And I live just like an outlaw –
They got me always on the run ...
We're all fugitives from injustice,
But we're going to be free –
'Cause your rules and regulations
Don't do a thing for me.*

(Richie Havens)

Introduction

Critical criminologists have persuasively argued that the current treatment of black people is the result of a long history of British racism and the construction of an 'alien other' in time and space. In the nineteenth century, certain sections of the *indigenous* population, and especially the 'dangerous' urban poor, tended to be seen as 'alien' or a 'race apart' (see Mayhew, 1851-62; Davis, 1989; see Chapter 4). Such people needed to be 'civilized' by the police (see, for example, Storch, 1976) and social reformers. Davis has argued that this 'race apart', whose violent, licentious, thriftless, criminal and politically volatile behaviour and values were thought to represent those rejected by the 'respectable majority', had been constructed by Victorian missionaries and reformers (Davis, 1989: 11).

Furthermore, according to Graham and Clarke, evidence from the colonial

experience was significant in terms of theorising at home:

Victorian missionaries and reformers articulated a strong sense of the superiority of the (white) British race which emanated from Britain's role as a colonial power. Imperial Britain abroad was still engaged in 'taming the savage', and images of the 'uncivilized' (black) savage fused with the excitement of the exotic to provide a heady cocktail of 'racialized danger' in the colonial imagination ... the evidence from the missionaries, explorers and administrators abroad of the lack of civilization of 'the African' simply confirmed the theories back home. Its domestic significance was manifested in fears about the 'degradation' of the British race being brought about by the overbreeding of the 'unfit' parts of society.

(Graham and Clarke, 1996: 148)

Arguably this outlook facilitated not only the construction of *indigenous* criminal 'others', but also the development of *racialised* criminal 'others', especially in view of the prevailing notions of white supremacy which gained additional momentum from the emergence in the 1880s of eugenics, the science of improving people by controlled breeding. According to Solomos and Back in contemporary societies' racial discourses, there are 'strong continuities in the articulation of images of the "other"' and also in the images used by racist and nationalist movements in defining 'race' and 'nation' (Solomos and Back, 1996: 213).

Jefferson argues that the 'criminal other' – 'defined in terms of class' – evolved in the early nineteenth century following the establishment of a police force designed to deal with problems incurred by changes brought about by the shift to industrial capitalism. The prevention of the 'labouring classes' from developing into the 'dangerous classes' was a primary aim of policing, and welfare strategies were largely directed at the 'children of the poor' for the same purpose (Jefferson, 1993: 27). Children being identified as being prone to delinquency was significant because:

This discovery of the juvenile delinquent in the early nineteenth century heralded the beginnings of a progressive *narrowing in the specification of the criminal Other* which became a feature of the century.

(Jefferson, 1993: 27 emphasis added)

According to Jefferson, by the mid-nineteenth century the basis of an ‘*ethnicised* criminal Other’ was also instituted as a result of the presence of Irish immigrants (cf. Davis, 1989; Jefferson, 1993: 27). During the nineteenth century a distinctly *masculine* criminal ‘other’ emerged, probably as a result of changes in the perception of the role of women in society (Jefferson, 1993: 28).

From the late nineteenth century onwards, Jefferson argues, the ‘criminal other’ has also been defined in terms of *age*, so that the ‘rough working class, adolescent male: the quintessential modern delinquent’ became the predominant criminal ‘other’ (Jefferson, 1993: 29). Black immigrants in the reserve unskilled labour pool automatically become part of the ‘ranks of the rough’ and *black adolescent males* become ‘a darker version of the criminal other’ (Jefferson, 1993: 30). Referring to the arguments of Gilroy (1987a), he argues that since black youth only became a key concern from the 1960s, this signifies that the criminal ‘other’ is ‘a historically specific outcome of ideological battles and ceaseless struggle to achieve hegemony (cf. Hall *et al.*, 1978)’ (Jefferson, 1993: 30, footnote 6).

Arguably ‘nineteenth century fears about the “alien”’ were revived by the 1980s riots when public perceptions of the ‘urban other’ reached a turning point (Graham and Clarke, 1996: 164) and ‘blackness’ emerged as ‘a cautionary role similar to...that once occupied by nineteenth-century fears of the crowd’ (Keith, 1993a: 10). As Keith also points out, ‘the generation of racial divisions’ in society is more completely described by the notion of ‘racialization’:

which stresses both the reality of the group formation process as well as the social construction of the differences between the racial identities so formed. The process of racialization is also of particular significance because it is one of the principal means through which subordination is produced and reproduced in society.

(Keith, 1993b: 239)

According to Keith the criminal justice system is one important 'arena' where "racial difference" is reproduced' and has had a long tradition of scapegoating certain groups in society, although the extent to which this has been inflicted on black people is 'without precedent'. The criminal justice system, 'through racist constructions of criminality', constitutes a significant 'racializing institution', where the criminalization of black people plays a key role, but its manufacture of a 'criminalized classification of "race" exists in conjunction with several different racializing processes' (Keith, 1993b: 239–240; see also Chapter 11). The construction of a black criminal 'other' has been, and remains, crucial in the 'racialization of law and order' in England and Wales.

Jefferson argues that empirical evidence supports the contention that it is 'the production of a criminal Other', where '*young black males* figure prominently' based on ideas about differential propensity towards criminality, which is at the root of police racism (Jefferson, 1993: 31 emphasis added; see also Chapter 2). He also infers that the 'criminal other' is inextricably linked with the concept of criminalization (Jefferson, 1993: 31–8). Criminalization on the grounds of ethnicity, and by implication the notion of an ethnicised criminal 'other', serves to divert attention away from social problems in Britain (Jefferson, 1993: 39), as has arguably already occurred in the US where notions of a 'specifically black underclass (Glasgow, 1980) risks diverting attention from structural disadvantage as a social problem to the question of ethnicity' (Jefferson, 1993: 39, fn.22).

Criminal 'others', 'folk devils' and scapegoats

The twentieth century saw the emergence of black people, and particularly black youth, as the ultimate manifestation of a criminal 'other' – easily distinguishable and identifiable in terms of colour and 'race'. At times this phenomenon was heightened by the denigration of some sections of the black community to the status of 'folk devils', the attachment of this pejorative label being greatly assisted by the negative stance adopted by the police towards black people and media misrepresentation.

Hall *et al.*'s (1978) analysis of the 'black mugger folk devil' traces the development of a moral panic in the 1970s concerning 'mugging' – not technically an offence in English law – which refers to street robbery. The authors describe it as a legal 'import' from the USA. They argue that the alleged increase in 'mugging' was a socially constructed phenomenon which was propelled into moral panic status as part of the state's response to a crisis in hegemony during a recession in capitalism. They draw on the concept of 'moral panic' (largely based on the criminological perspectives of labelling and deviance amplification) previously examined in Cohen's work on the emergence of Mods and Rockers. This work focused on the social reaction to the disturbances caused by groups of youths with scooters and motorbikes at various seaside resorts in 1964. 'Moral panic' was defined as follows:

A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests. Its nature is presented in a stylized and stereotypical fashion by the mass media ... Sometimes the panic is passed over and forgotten ... at other times it has more serious and long-lasting repercussions and might produce such changes as those in legal and social policy or even in the way society conceives itself.

(Cohen: 1972: 9)

According to Hall *et al.* the 'mugging' moral panic was instigated in the early 1970s by considerable media attention 'in the form of crime reports, features, editorials, statements by representatives of the police, judges, the Home Secretary, politicians and various prominent public spokesmen' (Hall *et al.*, 1978: 7), and further sensationalised press coverage followed the release of Metropolitan police statistics on 'mugging' in 1975 (see Chapter 2). However, from their examination of the 'statistical basis to this reconstruction of events' by the media and various agencies of control, they concluded that:

the reaction to 'mugging' was out of all proportion to any level of actual threat which could be reconstructed through the unreliable statistics. And since it

appeared to be a response, at least in part, not to the actual threat, it must have been a reaction by the control agencies and the media to the *perceived or symbolic* threat to society – what the ‘mugging’ label represented.

(Hall *et al.*, 1978: 29)

They argue that the ‘mugging’ moral panic, where black youth were widely perceived as the perpetrators, arose ‘in the middle of a general moral panic about the “rising rate of crime”’ and was a ‘relative latecomer’ in a succession of moral panics in the post-war period concerning youth (Hall *et al.*, 1978: 28, 182). The predominant image put forward in the media was that most victims were *old and white* while most perpetrators were *young and black* (see Hall *et al.*, 1978: 330). This was fundamentally different from other moral panics involving youth which were ‘white on white’ phenomena, for example, Mods and Rockers, or ‘white on black’ phenomena, for example, Teddy Boys during the ‘race’ riots in 1958, and ‘paki-bashing’ Skinheads in the 1960s.

Cohen’s (1972) term for the key player in moral panics, the ‘Folk Devil’, was adopted by Hall *et al.* who argued that the ‘mugger’ was an ideal example:

The Folk Devil – on whom all our most intense feelings about things going wrong, and all our fears about what might undermine our fragile securities are projected ... not only becomes the bearer of all our social anxieties, but we turn against him the full wrath of our indignation ... The ‘mugger’ was such a Folk Devil; his form and shape accurately reflected the content of the fears and anxieties of those who first imagined, and then accurately discovered him: young, black, bred in, or arising from the ‘breakdown of social order’ in the city; threatening the traditional peace of the streets, the security of movement of the ordinary respectable citizen ... an inevitable result of the weakening of moral fibre in family and society, and the general collapse of respect for discipline and authority.

(Hall *et al.*, 1978: 161–2)

Furthermore, the ‘black mugger folk devil’, a symbol of urban decay, was deliberately ‘summoned’ to promote ‘moral indignation and public outrage’ (Hall *et al.*, 1978: 162–3) at a time when social order was disintegrating so that its timely apparition could be used as a legitimisation for increased police powers to stem what was perceived to be a more

general rising crime rate. This argument seems to have correctly predicted increasing moves towards militarisation of the police in the 1970s, particularly following the announcement of a 'law and order' campaign by the Police Federation in 1975.

Although researched in the mid-70s, Hall *et al.* (1978) accurately forecasts the rise of Thatcherism in the late 1970s. This work, in addition to subsequent writings by Hall, alluded to the notion of 'authoritarian populism' (partly developed out of Poulantzas' 'authoritarian statism'), on which Thatcherism was said to be based. It was argued that there was a growing trend towards authoritarianism which involves the shift towards 'a moment of "closure" in which the state played an increasingly central "educative" role'. Issues relating specifically to the question of black criminality were integral to the development of 'authoritarian populism' which utilised:

the 'forging of a disciplinary common sense' [Hall, 1980: 3] to undermine welfare rights, notions of citizenship, and the freedoms of organised labour ... with 'the use of police powers to contain and constrain, and in effect to help to criminalise, parts of the black population in our urban colonies'. [Hall, 1980: 13]

(Keith, 1993a: 199)

According to Hall *et al.* (1978) the 'mugging' moral panic was socially constructed in order to detract attention away from increasing economic decline during the state's crisis of hegemony in 70s Britain (see also Solomos *et al.*, 1982: 35). The summoning of the 'black mugger folk devil' was an integral part of this process, contemporary social anxieties being blamed on marginalised groups – especially black youth who were the conveniently visible and accessible 'scapegoats' in the 1970s (see Hall *et al.*, 1978: 157). The 'scapegoat' was a mythological creature onto which all the sins and evils of the community were lodged, the creature then being cast out into the wilderness bearing all the sins of the community with it – thereby 'cleansing' society (Williams, unpublished, 1988: 187).

It can be inferred that a primary distinction between the development of a criminal 'other' and a folk devil is that the latter is actively summoned as prime mover of a moral panic when the state perceives a crisis in hegemony, whereas the former has wider application. The criminal 'other' and the 'folk devil' may also be examples of 'scapegoats'. In spite of some overlap between the meaning and application of these three terms, historically it has been shown that unlike criminal 'others', some 'folk devils' and scapegoats do not possess strictly criminogenic features. This applies to Mods and Rockers, to scapegoats such as witches who were persecuted and subjected to systematic 'witch-hunts' in the middle ages (see Lerner, 1980), and also mental patients. According to Szasz (1971) eventually the witch was replaced by the mental patient as the ideal scapegoat.

In contemporary Britain, it has been argued that black people, and especially *young* black people, fulfil this role:

In a period of prolonged economic and political decline in the aftermath of empire, white society has taken refuge in having a convenient scapegoat on its doorstep.

(NACRO, 1991: 46)

In order to be viable targets, scapegoats like criminal 'others' and 'folk devils' need to be easily distinguishable and visible. In support of his arguments, Szasz refers to the work of Kosinski who sought to explain the scapegoat phenomenon by relating a story about a man's delight in painting a plain-coloured bird in very bright and unusual colours and then observing it being pecked to death by plain-coloured birds:

The Painted bird is the perfect symbol of the Other, the Stranger, the scapegoat. By casting out the Other, Just Man aggrandises himself and vents his frustrated anger in a manner approved by his fellows. To man, the herd animal, as to his non-human ancestors, safety lies in similarity. This is why conformity is good, and deviance is evil.

(Kosinski, 1965: 43–44 as quoted in Szasz, 1971: 292)

In the 1970s, the young black male ‘mugger’ became the ideal scapegoat and highly visible criminal ‘other’ which reached fully-fledged ‘folk devil’ proportions since young black males, who were perceived as possible ‘muggers’, were ‘on the streets’, easily identifiable and accessible for police targeting. Furthermore, critical criminologists have argued that the historical construction of ‘black crime’ and the development of a racially defined criminal ‘other’ are embedded in the history of police-black relations. The latter then is a prerequisite to understanding current trends in discrimination/racism in the criminal justice system. For example, Gilroy (1982) emphasises the central role of the police whose professional ideology had a significant impact on the growth of the high association between black people and criminality, moulded by the media, which in turn helped to shape public opinion and legislation.

Gilroy acknowledges the instrumentality of the ‘mugging panic’ of 1971–2 and also the ‘long hot summer of 1976’, which witnessed ‘the most bitter confrontations to date between black people and the police’, in bringing about an ideological shift towards viewing the black population as criminally-inclined. He argues that ‘crime waves’ can be engineered as a result of certain offences being emphasised by changes in police sensitivity, policy and practice and that ‘mugging’ became a ‘self-fulfilling prophesy of this type’. Eventually there was a synchronisation between the image of the ‘mugger’ and the ‘disorderly black crowd’ in the shorthand term ‘street crime’ (Gilroy, 1987a: 92, 107; 1987b: 115).

Stereotypes of black criminality

Stereotypes of black criminality are underpinned by racial prejudice, racial attitudes and predominant racial stereotypes. Arguably, as Hall *et al.* (1998: 3, 5) have pointed out:

- *Racial prejudices* are based on the belief that people of a different ethnic or racial group are, by definition, inferior and are therefore likely to behave in ‘less civilised’ ways than those who belong to a superior group (e.g. white Europeans).

- *Racial attitudes* are racial prejudices which are expressed or mobilized in conduct and behaviour.
- *Racial stereotypes* are condensed, negative images, held by a superior group, of what is believed to be the typical behaviour of an inferior group.
- Racial stereotypes are structural. They persist in the unconscious thought processes and long-term collective memory of groups. They are embedded in the daily, routine, conduct of individuals as well as in the culture of social institutions...They influence the way these organizations work.
- The operation of racial stereotypes is a process: This takes place over time and changes according to circumstances and the status of the participants.
- The wide repertoire of racial stereotypes allows selective use in different contexts.
- Stereotypes operate at the level of perceptions and expectations, which influence the conduct and behaviour of individuals and groups towards one another.

Stereotypes of black criminality are also intrinsically linked with the notion of the black criminal 'other'. For Keith the promotion of black criminal 'otherness' by the police pre-dated the 1970s, 'the pimp' having emerged as the predominant stereotype of black criminality in the 1950s. This was the first of various stereotypes of black criminality 'amplified' by the police over the last five decades (Keith, 1993b: 245; see also Gilroy, 1987a: 79–81). During the 1960s, several members and supporters of Black Power groups in England were arrested, tried, and imprisoned often resulting in further police-black conflict surrounding various pickets and demonstrations often resulting in violent clashes with the police (see Chapter 2). Therefore, it is not surprising that the dominant image of black criminality in the 1960s was the 'Black Power activist' (Keith, 1993b: 245).

In the 1970s, black youth increasingly came to be perceived 'as a problem category for the police and for society as a whole was being framed increasingly around the question of crime', and debates about 'race' and crime, and the police and black youth, became increasingly politicised in which the mugging panic was the mainspring (Solomos, 1993: 121, 123; see also Chapter 2). According to Muncie's (1987: 45) chronology of moral panics, the 'mugging' panic in the 1970s was one of those focused on 'street crime'

within the context of a series of moral panics in relation to a 'generalized climate of hostility to "marginal" groups and racial minorities' (see also Muncie, 1996a: 53). Hall *et al.* argued that the police were largely responsible for the orchestration of public opinion on the 'mugging' moral panic, although they emphasise that the 'deterioration in relations between the police and blacks' pre-dated it (Hall *et al.*, 1978: 182; see also Humphrey, 1972). Consequently, the 'mugger' became the predominant image of black criminality in the 1970s (Gilroy, 1982: 174; Keith: 1993b: 245). Arguably, as pointed out by Hall *et al.*:

By 1980 the stereotypical image of young black males as the criminal, violent and disorderly "Other" who preyed on defenceless white pensioners, was firmly fixed in the popular imagination.

(Hall *et al.*, 1998: 7)

With hindsight it can be observed that the mugging panic can be said to fall into the category of moral panics that Cohen (1972: 9) described above as having 'serious and long-lasting repercussions'. It can be argued that the dominant images of 'the mugger' as black criminal and of 'race' as a criminal 'other' persisted in the 1990s (see Chapter 9). This is exemplified by the repercussions following the July 1995 announcement of the launch of 'Operation Eagle Eye' by the Metropolitan Police which specifically targeted young black males as potential muggers (see Chapter 2).

It has been suggested that the increasing shift to paramilitarism of the police in the 1970s and 1980s was often justified and legitimised as a necessary reaction to perceived threats to social order by black people in addition to their 'excessive criminality' (Cashmore and McLaughlin, 1991: 38; see Chapter 2). The violent clashes and running battles between the police and black people in the 1970s (see, for example, IRR, 1979) can be seen as the forerunners of the riots in the 1980s which witnessed further racialization of debates on law and order, crime and policing (Solomos, 1993: 128).

In the 1980s, in the period following the riots, according to Hall *et al.* 'racial

stereotyping remained prevalent' amongst rank and file police officers (Hall *et al.*, 1999: 7 citing Smith and Gray, 1986; Southgate and Ekholm, 1986; Graef, 1989; McConville and Shepherd, 1992; Holdaway, 1991a). Furthermore, by the mid-1980s, there was public acknowledgement that 'negative stereotyping was an institutional problem' in a Metropolitan Police report (Hall *et al.*, 1999: 8; Metropolitan Police, 1985: 48). Keith argues that the predominant stereotype of black criminality in the 1980s was the image of 'the rioter' (Keith, 1993b: 245), and according to Gilroy this was 'defined and amplified' by the police, similar to the 'mugger' (Gilroy, 1982: 174).

In spite of the long-standing tendency for black communities to be demonized as drug-ridden (see, for example, Gilroy, 1987a: 80, 100; McConville and Shepherd, 1992), following sensationalized media coverage in the late 1980s and early 1990s of 'Yardies' (said to be an organised crime organisation largely concerned with illegal drugs run by people of Jamaican descent), 'the rioter' to some extent appeared to be replaced by the image of 'the Yardie' as the predominant stereotype of black criminality in the early 1990s. By the late 1990s, Operation Trident, 'to tackle the rising tide of Yardie violence', had been set up by the police who linked a series of shootings in London, including 13 fatalities, to 'Yardie gangs' (*The Guardian*, 14 August 1999). Keith describes 'the underworld "Yardie" of the 1990s' as 'the ultimate folk devil' (Keith, 1993b: 245). This was the latest in a long line of negative images to be incorporated in the construction of a racially defined criminal 'other' engendered by the police and promoted by media labels/representations. It has also been argued that in addition to other 'criminal incarnations', the image of the black man as 'the knifeman' has remained prevalent (see Gilroy, 1987a: 73; see also Chapter 2).

Therefore, critical criminologists consider that images of 'black crime' and perceptions of black criminality, fuelled by media misrepresentation and disinformation, have largely been constructed within the ambit of police-black relations. Gilroy has stressed that:

What must be explained is the durability of these images and their remarkable ability to act both as a focus for popular anxiety about crime in general and as a sign of national decline, crisis and chaos. The element of blackness is crucial to how they work.

(Gilroy, 1987a: 110)

Notwithstanding the consistent and persistent impact of racial images of 'otherness', such as the 'pimp', 'mugger', 'Black Power activist', 'rioter', 'Yardie', and 'knifeman', it is clear that the issues and concepts through which it is articulated are complex and subject to change (Gilroy, 1993: 313–23; Solomos and Back, 1996: 99–100). Although the construction of racialised criminal 'others' is historically and socially specific, arguably just being *black* is likely to attract excessive adverse contact with the criminal justice system (see Keith, 1993b in chapter headnote; see also headnote Chapter 9; and Chapter 11).

Chapter 2

Discriminatory Practices? : Policing and Black People

Whatever the comparative statistical reality and its meaning, there is no doubt that the experiential meaning of policing for black people, especially for black youth, over the past twenty or so years or so, has been one of a hostile and alien force – one which has subjected their communities to aggressive, harassing and intimidatory ‘overpolicing’, yet has been only indifferent or half-hearted in the face of black and Asian victims of racist attacks.

(Jefferson, 1991: 183)

There is a strong case for arguing that the relationship between the police and the British black community is one that can be understood only in terms of premeditated repression by the British state.

(Keith, 1993b: 2)

Introduction

The criminal justice system can be regarded as a process with different stages involving ‘a sequence of decisions starting with behaviour that someone considers to be deviant or offensive, and ending with the punishment of the offender’. As Smith points out ‘bias against ethnic minorities could occur at any of these stages’ (Smith, 1997: 720). The police occupy a pivotal position in the criminal justice system as the first point of contact between ‘suspect populations’ and law enforcement. The police role is, therefore, possibly ‘the most significant because of their gate-keeping function in the process’ (Reiner, 1989: 6).

This chapter examines those police procedures and practices: reporting of crimes to the police, stop and search, arrests, cautions and prosecutions which impact directly on the identification of black suspects and defendants. Research in these areas is notoriously beset by methodological difficulties because crime statistics cannot be interpreted as ‘hard

facts' (Lea and Young, 1984: 15; Pearson, 1983; Bottomley and Pease, 1986), because of disparities in the classification of offences, and because of problems concerning under-reporting and under-recording. Moreover, the Metropolitan Police is the only police force in England and Wales that systematically records the ethnic origin of people arrested, cautioned or referred for prosecution. However, some information is available from records from other police forces, British Crime Surveys, or recently pursuant to *Criminal Justice Act* 1991, s. 95 which requires information to be published annually on the various criminal justice agencies so as to seek to avoid discrimination (Hudson, 1993: 4).

Histories of policing are contentious and contradictory (see Reith, 1938; Radzinowicz, 1968; Critchley, 1978a, 1978b; Storch, 1975, 1976; Cohen, 1979; Reiner, 1985b; Palmer, 1988; Emsley, 1996). Jefferson argues that until relatively recently historical accounts were dominated by the 'idea of the restrained use of force as a central feature' in the development of modern policing (Jefferson, 1991: 168) but that more radical alternative accounts have emphasised the:

coercive, class-based 'civilizing' function at the heart of the police role – neatly captured in Storch's notion of the early police as 'domestic missionaries' 1976 – not only accounts for the initial hostility and violence of public-police contacts, but also its continuation in working-class communities. 'Restraint' may characterise the police handling of the middle classes, but not the disorderly and criminal activities of the working classes.

(Jefferson, 1991: 169)

The concept of 'the policeman as domestic missionary' (Storch, 1976: 481) continues to have particular relevance. The 'civilising' function of British forces in the British Empire on its collapse was transported home to mainland Britain in the form of the police who continued the 'missionary' function on *immigrant communities* at home, especially in relation to the Irish in the nineteenth century (Emsley, 1996: 27), and black people in the twentieth century. Cashmore and McLaughlin agree that 'the type of policing practice

reserved for black people in Britain derives from the model established in former colonies' (Cashmore and McLaughlin, 1991: 19, see also 20–9). Thus the relationship between the police and black people cannot be seen in isolation from historical, socio-economic, and political developments. According to Holdaway:

Relations between the police and ethnic minority peoples display in a vivid and dramatically focused form tensions derived from the racial inequalities of contemporary Britain ... in the metropolitan centres of our society, uncertainty, suspicion and conflict underpin mundane relationships between the police and the ethnic minorities, especially young black British people...The policing problems experienced by the ethnic minorities are perceived as different from those experienced by other British people.

(Holdaway, 1987: 142, 144)

There are strong indications that this relationship has been and continues to be particularly problematic and strained. For example, the former Metropolitan Police Commissioner, Sir David McNee, acknowledged that:

Policing a multi-racial society is putting the fabric of our policing philosophy under greater stress than at any time since the years immediately after the Metropolitan Police was established in 1829.

(*The Guardian*, 25 September 1979, as quoted in Gilroy, 1982: 146)

Keith persuasively argues that black people have borne the brunt of the stresses and strains of policing in a 'multi-racist society', and that the relationship between the police and black people amounts to one of 'premeditated repression' by the British state' (Keith, 1993b: 2, see also chapter headnote), although he also asserts that the police are no better or worse than any other British institution (Keith, 1993b: vi). The police are not immune from 'institutionalised racism' (see Chapter 11) which pervades the Criminal Justice System:

In every single part of the system there is well documented evidence of racism of British society incorporated into the arenas of some of its most powerful institutions.

(Keith, 1993b: 242)

The chief constable of Greater Manchester admitted to the Stephen Lawrence Inquiry in October 1998 that ‘institutional racism’ existed in his police force (see *the Guardian*, 27 August 1999). This was also officially acknowledged as having wider significance in the Macpherson Report (Home Office, 1999a: para. 46.1) published in February 1999:

The six-year search for justice by the parents of the murdered black teenager Stephen Lawrence last night secured a landmark commitment from the Government to combat the “institutional racism” which it acknowledged exists not only in the police but in many organisations in British public life. Sir William Macpherson’s report concludes that the first police investigation into the murder “was marred by a combination of professional incompetence, *institutional racism* and a failure of leadership by senior officers”... But Sir William says that there is *no evidence that the policies of the Met are racist*.

(*The Guardian*, 25 February 1999 emphasis added)

Macpherson’s ‘very broad’ definition of ‘institutional racism’ contained in the report has been criticised for being ‘too weak’ (see Chapter 11), but the report did help to instigate what has been described as a ‘passionate debate’ on race relations (*The Guardian*, 25 February 1999). However, Doreen Lawrence, Stephen Lawrence’s mother, in a statement reacting to the report was adamant that:

Black people are still dying on the streets and in the back of police vans...I was looking forward to the report as being a watershed, but it has only scratched the surface and has not got to the heart of the problem. My feelings about the future remain the same as it was when my son was murdered. Black youngsters will never be safe on the streets. The police on the ground are the same as when my son was killed...nothing has changed.

(*The Guardian*, 25 February 1999)

According to the Home Office (1998), in 1997/98, ‘racial incidents’ increased by 6

per cent – ‘possibly reflecting better reporting and recording of such incidents’ (Home Office, 1998: 5). Furthermore, immediately prior to the release in January 2000 of a report, *Policing London Winning Consent* (a study ordered by the inspectorate of the constabulary following the Macpherson Report into the Stephen Lawrence Inquiry), Assistant Metropolitan Police Commissioner, Denis O’Connor, produced the most recent statistics on ‘racial incidents’ which showed ‘a fourfold increase in 1999’, however, he acknowledged that the 20–23 per cent clear-up rate ‘had not improved’ (*The Guardian*, 8 January 2000).

The day after the release of *Policing London Winning Consent* which focused ‘on the ability to investigate murder’, and in which Dan Crompton reviewed ‘the attitude to race issues’ (*The Guardian*, 11 January 2000), it was reported that he:

praised some of the initiatives taken by the Met since the Macpherson report, including the setting up of the racial and violent crimes task force. But he highlighted continuing problems within the ranks over racist crime investigations. “There is more to be done in securing the hearts and minds of non-specialist police officers”, he said. “A pervasive feeling exists among some staff that what is seen as special treatment for the victims of racist attacks can only be delivered by prejudicing service to the wider community. Until officers and staff understand the impact of hate crime because of skin colour or cultural difference, securing the appropriate initial response to victims will remain an unfulfilled challenge”.

(*The Guardian*, 11 January 2000)

Thus allegations of discriminatory police practices, the mushrooming of civil actions against the police, and miscarriage of justice cases have helped to generate loss of confidence in the police force which is also addressed below in this chapter. During, and in the aftermath, of the Stephen Lawrence Inquiry, black and Asian people, in particular, may have developed a heightened concern about their vulnerability to racist attacks and about police neglect in the investigation of such incidents (see also Chapter 12). Crime statistics showed a fourfold increased in reported racial attacks in 1999 (*The Guardian*, 25

February 1999). The role of pressure groups, for example, the Stephen Lawrence Family Campaign and allied groups representing the victims of police neglect and malpractice, have been highly instrumental in keeping issues of 'race' and police accountability on the political agenda (McLaughlin and Murji, 1999: 381).

Reporting Crimes to the Police

With the exception of traffic and drugs offences, prospective suspects are mainly brought to the attention of the police as a result of reports from victims. The total extent of the racial proportion of victims and offenders cannot be fully determined owing to the widely acknowledged high degree of non-reporting of offences. Research in the 1980s has suggested that much crime is intra-class and intra-racial (see, for example, Jones *et al.*, 1986), but the British Crime Survey (BSC) 1988 (Mayhew *et al.*, 1989) suggested that as much as 85 per cent of cases where the victims were white, the offenders were black. However, victim survey data suggest that in about two-thirds of cases victims do not specify the 'race' of the offender (Smith, 1983: 71; Fitzgerald and Hale, 1996: Table 3.4), so that in the majority of cases 'the victim's decision to report the incident cannot be racially biased' since the offender's ethnic group was unknown (Smith, 1997: 730–1).

Of those offenders who *are* described by victims, black people appear to be over-represented in relation to the general population. In the 1981 Policy Studies Institute (PSI) survey of Londoners it was found that where victims did describe offenders in terms of 'race', offenders were described as 'black' about four times the proportion of black people in the general population, whereas South Asians were considerably under-represented (Smith, 1983: 73). Police data in 1984 and 1985 for Assaults, Robbery and other violent theft in London where the victim could describe the offender showed that 31 per cent of perpetrators of Assaults, and 67 per cent of perpetrators of Robbery and other violent theft were 'non-white'. Smith points out that interpretation of these figures is problematic

because of the 'vagueness' of this categorisation (Smith, 1997: 731). There were similar findings in the BCS of 1988 and 1992.

Shah and Pease's analysis of 1982, 1984 and 1988 BCS data on crimes against the person showed that where no injury was incurred, crimes were 'somewhat over-reported when committed by non-whites' whereas crimes actually causing injury were 'somewhat under-reported'. The decision to report to the police varied according to *the perceived 'race' of the offender* and other variables such as the degree of injury involved and whether a weapon was used. It was concluded that the role of 'race' in the reporting of crimes was not simple but that 'that the first stage in making offenders potentially available to the penal system is discriminatory, but discriminatory in a complex way' (Shah and Pease, 1992: 198). Commenting on these findings, Smith suggested that 'differential reporting to the police is not a significant factor leading to the criminalization of black people' mainly because victims can only describe the offender in 'no more than 40 per cent of cases' (Smith, 1997: 731). Nevertheless, any tendency towards over-reporting black perpetrators *could* arguably increase the risk of black people being criminalised.

Stop and Search

Prior to the *Police and Criminal Evidence Act* 1984 (*PACE*) no national legislation codified powers on stop and search although there was a variety of local powers. Consequently, police practice on stop and search may have varied in different areas (Smith, 1997: 732; see Willis, 1983). Section 1 of *PACE* provides that the police have authority to stop and search persons or vehicles on the 'reasonable suspicion' that they would find stolen goods or prohibited articles. The *Criminal Justice and Public Order Act*, 1994 increased powers by providing for the police to stop and search any person or vehicle for dangerous instruments in an area where 'incidents involving serious violence may take place', no 'reasonable suspicion' being required, and refusal to co-operate is made a

criminal offence.

Smith has argued that the 'reasonable suspicion' is so vague that 'a policy like stop and search *cannot be effectively regulated through the law*' (Smith, 1986: 93). As McLaughlin, citing Brodgen, has pointed out, police use of such powers, based on this vague notion has been controversial particularly in view of:

persistent allegations that highly discretionary street policing powers are not used primarily to assist crime detection but to collect information on individuals, to target, control and criminalize communities and to discriminate against specific groups (Brodgen, 1994).

(McLaughlin, 1996: 83)

In Willis (1983) it was estimated that only about 50 per cent of stops carried out were actually recorded. Thus the real extent of stops and searches remain unknown (see Bottomley *et al.*, 1991: 40; see also Fitzgerald and Sibbitt, 1997) since some remain unrecorded. It is interesting to note that stops under Road Traffic provisions do not have to be recorded, therefore, again the extent of these also remains unknown. Moreover, in the television programme, 'Race against crime', Assistant Metropolitan Police Commissioner, Dennis O'Connor, stated that 3 to 4 times as many black people are stopped and searched in London as white people and noted that the 'disproportionality was even greater for vehicles (Channel 4 Television, 7 November 1999).

Stevens and Willis' (1979) Home Office study of 1975 Metropolitan Police statistics, and Willis' (1983) study of two London and two provincial police stations found that recorded stop rates for black people, especially *young* black people, were markedly higher than for whites. In the latter, *young black males* aged 16–24 were stopped particularly frequently: about 10 times as often as the average at two London police stations (Willis, 1983: 14). Commenting on these two studies, Holdaway asserts that 'it seems reasonable to argue that the police misuse their discretion when stopping black people in the street'

(Holdaway, 1987: 147). This reiterates the importance of the role of discretion in police decision-making, which, he suggests, is likely to be exercised unfairly in the case of black people at the outset of the criminal justice process. Thus the police officer as the gatekeeper of the criminal justice system (see Reiner, 1989 above) 'must constantly make decisions about which particular offences he should do something about' (Smith and Gray, 1985: 14). The importance of the exercise of discretion has also been identified as pivotal in criminal justice decision-making at subsequent stages of the criminal justice process, for example, in sentencing (Hood, 1992: 84; Gelsthorpe, 1996: 116).

A study in Manchester in 1980 found no difference in the stop rate for black and white people living in the same area (Tuck and Southgate, 1981), but Walker (1987a) and Jefferson (1988) have argued that such results were obtained because the area studied was small and homogeneous. Skogan has also observed that the sample was too small to demonstrate any differential stop and search rates between black and white people (Skogan, 1990: 53); whereas, in other studies (for example, Willis, 1983 above; and Smith and Gray, 1985) as Smith points out, on 'larger and more heterogeneous areas' such differences have been found (Smith, 1997: 732). Walker *et al.*'s (1992) study in Leeds in 1987 found that black males were disproportionately stopped when in areas with *less than 10 per cent non-whites*, but that white males were disproportionately stopped in areas with *more than 10 per cent non-whites*.

A PSI study in London in 1982 found that the police stopped and searched proportionally more black people than white (Smith, 1983). This study and two others in the 1980s also found disproportionately high stop rates for young black males (Southgate and Ekholm, 1984; Jones *et al.*, 1986). Research based on the BCS 1988, found that even when factors such as age and occupational status were taken into account, African-Caribbeans were significantly more likely to be stopped by the police. Significant differences in terms of 'race' were not found in relation to *multiple* stops, but African-

Caribbeans were more likely to be searched than white or Asian people even when other factors were controlled for (Skogan, 1990: 32; see also Fitzgerald, 1993: 15). However, differences found in Skogan (1990) 'may partly reflect variations in the extent to which "stop" powers are used generally in different police areas' (Home Office, 1992a: 14).

Evidence from a dossier on policing of the black community presented in 1987 to the former Metropolitan Police Commissioner, Peter Imbert, suggested that:

Rude and hostile questioning accompanied by racial abuse is commonplace... Persistent stop-and-search in this fashion engenders considerable anger and frustration, but the police often seem impervious to this fact. Instead, signs of frustration are often seen as proof that they have actually netted a criminal.

(IRR, 1987:12-3)

Furthermore, a study based on 52 interviews with ex-offenders (75 per cent black) carried out during 1989 and 1990 in the West Midlands found that almost all of the black informants 'felt they were stopped and sometimes searched *because they were black*', and that how they had been handled at initial encounters with police resulted overwhelmingly in 'little confidence in getting fair treatment from the police' (NACRO, 1991: 14-15; emphasis added).

Norris *et al.*'s (1992) participant observation study of routine police patrols in two police divisions in London and one in Surrey (of 213 stops involving 319 people over fifteen months in 1986 and 1987) found that black people were 'two and a half times more likely to be stopped than their presence in the local population suggests', and more likely to be stopped than whites 'for less tangible reasons' (Norris *et al.*, 1992: 212, 215). However, at both contact and processing, black and white people were 'equally likely to be calm and civil', 'race' having 'little impact on whether a person is positively treated'. Police demeanour towards a person stopped was rated 'negative' more (by 17 per cent) in the case of *white* than of black people, although it was observed that two and times the

proportion of the former showed 'signs of insobriety' (Norris *et al.*, 1992: 217, 219). The police remained 'largely neutral' towards black people who were stopped, but a slightly higher rate of formal action was taken against black people as compared to white people following stops (Norris *et al.*, 1992: 222).

Norris *et al.* (1992: 209–10) note that previous research had found that in routine policing neither black nor Asian people were subjected to 'greatly inferior treatment' (Smith and Gray, 1983: 209); that black people were more likely to be arrested because they were more disrespectful to the police (Waddington, 1983, 1984), or more uncooperative (Smith and Gray, 1983: 101). They were also more likely to be stopped and arrested because of higher rates of offending (Stevens and Willis, 1979), although the question of higher black rates of offending remains contested (see below; see also Introduction).

Figures released by the Home Office for the first time providing an ethnic breakdown of persons stopped and searched in 1993-94 showed that, overall, 110,522 (25 per cent) people from 'ethnic groups' were stopped and search out of a total of 441,905, whereas such groups only comprise 5 per cent of the general population (*The Weekly Journal*, 2 March 1995). Amin (1995: 7) observes that these statistics showed great variation between different areas, the highest proportion of stops and searches occurring where the proportion of black and minority ethnic populations was greatest. For example, over 50 per cent of all stops and searches in 1993-94 were carried out in the Metropolitan Police area. 42 per cent of the total were of minority ethnic origin, as compared to 20 per cent in the general population of the Metropolitan area:

The London figures provide the first large-scale evidence that black people, particularly of Afro-Caribbean origin, are more likely than people from other ethnic groups to be stopped and searched. Furthermore, the higher rates of black searches in boroughs with smaller black communities may be interpreted as direct or at least indirect evidence of police discrimination.

(Amin, 1995: 7)

However, in view of the ‘extremely weak, and largely unenforceable’ criterion of ‘reasonable suspicion’ in justifying stops and searches, Smith argues that ‘the question whether the relatively high stop and search rate for black people amounts to unequal treatment is therefore very hard to answer’ (Smith, 1997: 735). For example, there was no difference between African-Caribbean and white people in the proportion of stops leading to an arrest or to an offence being reported (Smith, 1983: 116). He also refers to Norris *et al.*, 1992 (see above) which found that formal action was taken by the police following a stop in 9 per cent more cases involving black people than white, although the difference was not statistically significant:

At one level these findings show that the higher stop rate of Afro-Caribbeans is ‘justified by results’, which may suggest that it does not amount to unequal treatment...however, decisions made within the criminal justice system tend to be self-validating. Decisions at later stages may be influenced by a need to justify a decision taken earlier. It remains possible that the police, having stopped a higher proportion of black than of white people, then work harder to find offences with which to charge the black suspects.

(Smith, 1997: 735)

His own earlier observational research with Gray in London concluded that neither the person’s behaviour nor appearance influenced the police decision to stop a person, nevertheless in relation to the likelihood of ‘getting a result’ police applied certain criteria. The impression gained by the researchers was that ‘whether the person was black was one of these criteria, but that other criteria were more important’ (Smith and Gray, 1983). Again referring to Norris *et al.* (1992), Smith concludes that:

These findings speak strongly against the theory that the high stop rate of black people is caused by their hostile behaviour towards the police. They suggest, instead, that stops of black people are rather more likely to be speculative than stops of white people.

(Smith, 1997: 736)

Overall, as Smith has also stressed, it is highly apparent that the essence of police stop and search powers is that they are 'highly discretionary' (Smith, 1997: 735; see also Brogden, 1994 above). Black people may continue to attract the *unfavourable exercise of discretion* in relation to stop and search as is likely to occur in other stages of the criminal justice system. Furthermore, differential treatment in relation to stops and searches could make a significant contribution to black people's criminalization:

Clearly the overrepresentation of black people at later stages in the process could in principle arise partly because the police use of their discretion to stop a larger proportion of black people than of other ethnic groups.

(Smith, 1997: 732)

According to 1997/98 statistics for all police force areas recorded under s.1 *PACE*, out of just over 1 million stops and searches, 111,000 (11 per cent) were of black suspects and 9,500 (1 per cent) of 'other' non-white origin. Black people, overall, were 'five times more likely to be stopped and searched than whites'. The highest rate of stop/searches of black people per 1,000 in the general population aged 10 and over in ten selected police force areas was in the Metropolitan Police (181), Leicestershire (123), and Greater Manchester (116) (Home Office, 1998: 13). Arguably, large-scale stop and search and the disproportionate stopping of black people has been one of the causes of hostile police-black relations (Smith, 1997: 736; see also IRR, 1987: 30) and remain a major concern at the turn of the millennium.

In spite of the empirical evidence and contemporary concerns on these issues, the Macpherson Report states that current police powers on stop and search 'should remain unchanged' (Home Office, 1999a: Recommendation 60). Doreen Lawrence, Stephen Lawrence's mother, specifically queried this in her statement following the publication of the report (*The Guardian*, 25 February 1999). According to McLaughlin and Murji, the inquiry's neglect to explain why it reached this conclusion was 'most obvious' of the

‘many flaws’ of the report relating to the police (McLaughlin and Murji, 1999: 375). However, one change announced in the Metropolitan Police’s package of reforms ‘Protect and Respect’ included ‘a new approach to stop and search’ including increased monitoring of such powers, and the pressure caused by stop and search on minority ethnic groups was officially acknowledged:

It is now accepted within the police that this is one of the main areas of concern for ethnic minorities and has to be addressed.

(*The Guardian*, 25 February 1999)

Lord Dholakia, chairperson of NACRO, has argued that ‘it is difficult to exaggerate the damage’ that the ‘racially biased’ use of stop and search has done to police-minority ethnic group relations (*The Guardian*, 16 December 1999; see also Chapter 11). He argues that the suggestion raised in a report prepared for the Metropolitan Police by former Home Office researcher Marian Fitzgerald published 15 December 1999, *Searches in London*, that ‘a reduced use of stop and search has increased crime is not easy to reconcile with the detailed figures’; however, that this report provides:

Strong evidence that, even now, many stops and searches are probably illegal, as reasonable grounds for using the power do not exist. Some stops are being used to harass people with previous records. Others are used to break up groups of young people when there is no evidence that they are committing offences.

(*The Guardian*, 16 December 1999)

Following allegations that the reduction of stop and searches led to increases in crime as a consequence of the Macpherson Report, it is interesting to note the author’s response almost a year after its publication:

He says it is “an absurd over-simplification” to link a fall in stop and searches with the rise in street crime ... “If the police are holding off because they are afraid of being called racist that is not the fault of the report. The report didn’t cause the problem, it highlighted the problem”.

(The Guardian, 18 February 2000)

Overall, findings from research on stop and search provide compelling evidence of discriminatory police practice where the role of police discretion is pivotal. The weight of the empirical evidence strongly suggests that disproportionate stop and search rates for black people does amount to unequal treatment. Notwithstanding the risk of being stopped by the police that other people, especially young people, face, it can be argued that the risk is greater for black people in general than for other ethnic groups. Moreover, black people’s fear – for themselves or for significant others – of being stopped by the police is also likely to exceed that of most groups in society.

Arrests

Early qualitative research found that black people were likely to be subjected to ‘arbitrary’ stops, searches and arrests, and that ‘unnecessary violence’ was often used by the police when arresting black people (IRR, 1979: 30; see also 31-3; and IRR, 1987: 15–19). From 1975–1987 crime statistics show that a disproportionate proportion of persons arrested for notifiable offences were black as compared to the proportion in the London population. This increased from 12 per cent or three times the proportion of black persons arrested in the London population in 1975, to 18 per cent or four times the proportion in 1987. There was a marked increase in the proportion of black people arrested for Robbery, which at 54 per cent of all those arrested for this offence, amounted to 10 times the proportion as in the London population (Home Office, 1989a). This represents a 25 per cent increase in the total percentage of black people arrested for Robbery in 1975 (Stevens and Willis, 1979).

Mair (1986) also found that that black defendants were more likely to be arrested (and prosecuted) but he contends that this may simply be attributable to their youth. This was supported by Smith and Gray's findings which showed that the probability of being arrested for young African-Caribbeans was much higher than for young whites. Moreover, arrest rates for minority ethnic groups may be higher in areas with a population containing a large proportion of such groups (Smith and Gray, 1985).

In Walker *et al.*'s study in Leeds in 1987 of a sample of 11-35 year old males, it was found that, *overall, black males were over-represented in terms of arrest rates*, although both Asian and white males were under-represented. There was a difference in the arrest rates between black, white, and Asian males according to *the percentage of black and Asian households in the area*, and according to *age* (whether they were in the 11-21 or in the 22-35 years age group). In areas with *less than 10 per cent* black and Asian households black males had the highest arrest rates in both age groups, and the Asian rate was similar to the white rate. However, in areas with *more than 10 per cent* black and Asian households in the younger age group, the white rate was much higher than the black rate, whereas the Asian rate was lower. In the older age group the black rate was only slightly higher than the white rate, and the Asian rate was, again, lower (Walker *et al.*, 1992: 86). It has been suggested that one explanation is that white people in areas with a large black population are 'an unusual and high crime group' (Smith, 1997: 739).

This raises the issue whether higher arrest rates simply reflect higher rates of offending. It has been alleged that the higher arrest rate in the case of *black people* could be partly explained because it is linked to *higher rates of offending* (see Jefferson, 1991: 182; Smith, 1997: 738). However, citing a recent Home Office self-report study (Graham and Bowling, 1995) on just over 2,500 black, white and Asian people aged 14-25 which found that *young black and white people had similar rates of offending*, while *young Asian people had lower rates*, the Penal Affairs Consortium argue that:

It is clear that racist assumptions that black people are inherently more likely to commit crime are unsustainable.

(Penal Affairs Consortium, 1996: 2)

However, Gelsthorpe points out that the black population on average is younger than the white population, so that a higher proportion of the former falls within the 'peak age' for offending – 18 for males and 14 for females (Gelsthorpe, 1996: 130).

According to Jefferson, higher rates of offending can also be linked to 'disproportionate levels of disadvantage' but since Asians are under-represented in arrest rates, other factors (such as the cultural influences derived from family/community structure and religion and the 'demeanour' of the potential suspect when approached by the police) must have some bearing on arrest rates. He also argues that 'the more hostile black youths' may be particularly prone to project what could be perceived as a contemptuous attitude towards the police which could in turn make such *black youth* likely targets for stop and/or arrest (Jefferson, 1991: 181-2). Previous research has suggested that, especially in the case of *young black people* (Waddington, 1983, 1984; Reiner, 1985), the disproportionate level of disrespect shown to police officers led to the disproportionate arrest of black people rather than police prejudice (Waddington, 1983, 1984). Findings based based on in-depth interviews with black (18 men and 6 women) and white people (22 men and 6 women) also suggested that black people were *more likely to be arrested at a younger age* than white people (NACRO, 1991: 14).

Evidence that black people have been found to be *more likely to be acquitted after trial* as compared to white people and Asian people (see, for example, Dholakia and Sumner, 1993: 34), and that the difference between the probability of being acquitted between young black and white people was significant (Mhlanga, 1997: 84) goes some way to support the contention that arrest practices may be discriminatory. However, since there is also evidence to suggest that *black people but not Asian people* are vulnerable to

discriminatory police practice in relation to stops and arrests, it can be argued that 'race needs to be conceptualised in the plural' (Jefferson, 1991: 183; see also Chapter 11).

Overall, as Fitzgerald has pointed out, the findings of Demuth (1978), Stevens and Willis (1979), and Fludger (1981), Cain and Sadigh (1982), and Hood (1992) may suggest that 'arrest rates for Afro-Caribbeans might be a consequence of more active policing'. Results from the 1988 BSC (Fitzgerald and Hale, 1996) have confirmed that 'police presence' may be greater in areas with a large proportion of African-Caribbean residents (Fitzgerald, 1993: 19).

In 1997/98, out of 1.98 million arrests, 7 per cent were recorded as being of black people, 4 per cent of Asian and 1 per cent of 'Other' non-white groups. Overall, black people were 5 times more likely to be arrested than white people in ten selected police force areas. In these areas, between 8 and 14 per cent of suspects were arrested following a stop and search of (Home Office, 1998: 13–14). In Willis' (1983) research on two London and two non-London stations it was estimated that about 10 per cent of stops led to an arrest for both black *and* white people. However, referring to the BCS 1990, Hood points out that there is evidence to suggest that black people may be disproportionately arrested for indictable offences, especially for offences which are more likely to receive a custodial sentence, and that *the greater probability of arrest for black people can be linked to more frequent stops and searches* (Hood, 1992: 5). Similarly, the 1997/98 figures showed that *black people were more likely than white people* to be arrested in these circumstances (Home Office, 1998: 14). Therefore, recent figures suggest that higher stop and search rates for black people may increase the likelihood of higher arrest rates.

Police decisions to prosecute or caution

According to Smith, different criteria have been adopted by different police forces in relation to the decision to charge or to caution, and 'there is wide scope for the exercise of

discretion by individual officers' (Smith, 1994: 1074). In Farrington and Bennett (1981) *no difference was found* in cautioning rates in terms of 'race', but as Walker (1988) points out, the combination of black and Asian people in this study could have affected the results. In contrast, NACRO found that black people detained at the police station were less frequently given a caution than white detainees: 10 per cent less of the black group had at some time been given a caution, as compared with the white group (NACRO, 1991: 18).

As Smith has pointed out, research on the progress of cases from arrest to prosecution is 'fragmentary' and has tended to focus on juveniles owing to the official stance on juvenile justice which has encouraged the use of discretion in decision-making and diversion from the prosecution process. He argues that if any 'bias' exists whereby minority ethnic groups are disproportionately prosecuted as compared to white people, then available evidence only suggests that the overall effect is small. According to crime statistics in London 1984–5, there was 'no appreciable difference' in the ethnic composition of the proportion of persons arrested compared with those prosecuted from minority ethnic groups 'which suggests that ethnic group was not a factor in determining whether arrested persons would be prosecuted' (Smith, 1997: 739). However, some empirical studies (see below), both prior to and subsequent to the implementation of *the Prosecution of Offences Act, 1985 (POA)* have found to the contrary in the case of juveniles.

Prior to the *POA*, which provided for the setting up of the Crown Prosecution Service (an authority independent of the police which decides whether criminal proceeding should be instituted or continued), Walker's study of prosecutions of males aged 14–16 in London magistrates' courts and Crown Courts in 1983 found that there was a small but significant difference (3 per cent) in the proportion of young black defendants as compared to young whites who had their cases withdrawn owing to insufficient evidence. This difference

could be explained in terms of the police being inclined to charge black suspects on less evidence than whites, or for another reason, such as witnesses being less willing to give evidence in cases involving black defendants. Since relatively *more blacks* had the case dismissed without trial owing to insufficient evidence, this suggested that the police more readily prosecute black people or that the court requires more convincing evidence for black defendants (Walker, 1988: 455–6, 459). However, subsequent findings for 17–25 year olds in the same study showed that the proportion of cases withdrawn owing to insufficient evidence was about 5 per cent for black *and* white defendants (Walker: 1989: 365).

Similarly, Landau and Nathan (1983) found that black juveniles were more likely to be prosecuted than white juveniles in London, and less likely to be cautioned. Walker criticises this study on the grounds that social class was not taken into account, and because it should not be assumed that prosecution rather than cautioning is the ‘harsher decision’ since the latter requires an admission of guilt, and some defendants may prefer to be prosecuted, whether guilty or not, in the hope of an acquittal (Walker, 1988: 444; see also Smith, 1997: 741–2). A study by the CRE on juveniles dealt with by seven police forces in 1990 also found that African-Caribbeans, and, to a lesser extent, Asians were diverted from court far less than whites. Although the numbers were too small to permit conclusive findings, they did suggest that the differences in prosecution rates between racial groups were not primarily due to the type of offence committed or past record, but possibly owed more to differences in admission rates between ethnic groups (CRE, 1992: 23). Smith has commented that ‘from certain limited analyses reported’ in this study, racial differences in prosecution rates may also be influenced by the proportion of arrested persons who denied the offence (higher for African-Caribbeans than whites), those having previous convictions (higher for African-Caribbeans in some areas), and already on bail or warrant or under a conditional discharge at the time of arrest (higher for African-

Caribbeans in the West Midlands) (Smith, 1997: 740).

A more extensive study of black juveniles and criminal justice was carried out by Mhlanga on data collected on all male defendants aged 10-17 arrested between May 1983 and July 1986 residing in the London Borough of Brent where the minority ethnic population is the largest in the UK, both numerically and proportionately (Mhlanga, 1997: 48, 31, xvi). This research primarily sought 'to test a differential outcome hypothesis' between 'black, Asian and white youth', the assertion being that black people receive harsher treatment from the criminal justice system than their white and Asian counterparts. It avoided some of the drawbacks of some of the previous research in this area because it had a large sample with a high proportion of black and Asian people, and employed, according to the researcher, a 'comprehensive and multivariate' analysis 'contrary to some previous studies which have provided primarily bivariate analyses of their data'. The importance of such an analysis was that 'it was useful in isolating the race effect on outcomes, either of itself or interactively' (Mhlanga, 1997: 132, 139, 6).

Moreover, the researcher was a participant observer throughout the period of the study, and problems of access were eased owing to his official position as 'a youth justice practitioner and "a responsible adult" for the purposes of s. 57 and 66 of *PACE*, pertaining to the rights of young people and the Police Code of Practice', which also enabled him to acquire some qualitative data (Mhlanga, 1997: 140). In addition to findings which confirmed other 'race-specific outcomes' (Mhlanga, 1997: 132; see Chapter 3), it was found that white children 'were more likely to have received police diversionary measures when compared to black children' (Mhlanga, 1997: 75).

Recent figures on ten selected police force areas show great regional variation in the use of cautioning. Out of those seven forces able to provide data for both arrests and cautions on the same notifiable offence basis in 1997/98, suspected black offenders had a lower cautioning rate than whites and Asians. The reason why the use of cautions vary

'may reflect ethnic differences' in such factors as 'whether it was a first offence, the seriousness of the offence, the admission of guilt, whether the police officer perceives the offender as showing signs of remorse as well local cautioning policy and practice' (Home Office, 1998: 20). Fitzgerald (1993) showed that black people were less likely to admit committing the offence. In Phillips *et al.*'s (1998) study, it was suggested that this may account for the finding that a higher proportion of black people had no further action taken against them in their research on a sample of suspects in 1993/94. It was found that black and Asian suspects were significantly less likely to be cautioned than white suspects.

In addition to the possibility of differential treatment for black people in relation to prosecution *rates*, some research has suggested that the black people are more likely to be charged with *more serious charges* than whites for the same substantive offence. As Fitzgerald has pointed out, notwithstanding the findings of Walker (1988, 1989) and Hood (1992) (see also Introduction and Chapter 3), African-Caribbeans are more likely to be charged with 'indictable only' offences, but it still remains open to question as to whether minority ethnic groups 'are effected by different charging practices on the part of the police' (Fitzgerald, 1993: 19). However, the crime statistics clearly establish that the *type of charges* brought against black people differs from those against white and Asian people, and, although this could 'reflect different patterns of offending' or 'charging practices' (Home Office, 1992a: 14; see also Home Office, 1989a above), such differences and/or differential treatment in terms of higher *rates* of prosecutions as suggested in some of the empirical research are likely to add to the disproportionate criminalization of black people.

Loss of confidence in the police

Various studies have confirmed black people's overriding lack of confidence in the police (Smith and Gray, 1983; Walker *et al.*, 1992; Skogan, 1990; Research Services, 1990; NACRO, 1991; Jefferson and Walker, 1992; *The Weekly Journal*, 2 March, 1995),

especially in the case of *black youth* (Smith and Gray, 1983), who have been found to be most likely to hold negative and hostile attitudes towards the police (Small, 1983) and/or to have critical opinions about the police (Gaskell and Smith, 1981, 1985). While other groups may also be critical of the police, *young males* may be more likely to develop antagonistic attitudes owing to the higher proportion of adverse encounters with police, which may be particularly marked for young *black* males:

in terms of the collective experience of policing which young males share in a particular community, *race is a key structural determinant* and it is the relative intensity of surveillance that the two groups experience [blacks and whites] which is important. For whites, police surveillance is diluted – even for males under 35 the majority will not have been stopped by the police in the last year. In contrast, it will be a minority of black males who have not been stopped.

(Norris *et al.*, 1992: 213 emphasis added).

Thus the underlying reasons for black people's lack of confidence in the police may be based on a number of factors. For example, it has been reported that there is 'a catalogue of grievance over deaths of black people in police custody' (*The Guardian*, 25 February 1999), and other factors such as excessive physical and verbal abuse, excessive stop and search practices, and discontent with the police disciplinary and complaints' procedure. There have also been increasing concerns about police handling of racist attacks, and also generally cases where the victim was black (see also Chapter 12). Figures for 1997/8 showed that suspects for homicides involving black victims were less likely to be identified by the police than for white or those from other minority ethnic groups: 40 per cent of homicides with black victims had no suspect in contrast to 10 per cent of white and 13 per cent of Asian victims (Home Office, 1998: 5, 27).

A police survey in the mid-1990s found that 78 per cent of black people believed that a black case would be investigated less thoroughly than a white one, and 76 per cent had no faith in the police complaints' procedure (*The Weekly Journal*, 2 March 1995). Earlier

research suggested that the underlying reasons for such distrust of official channels for complaint were that:

black people have found that the processing of complaints against the police is subject to long delays; that, because the system relies on the police themselves to investigate complaints, it frequently results in equivocal findings, and even in abuses of the complainants' rights; and that, when complaints are upheld, no effective disciplinary action is taken against the officers concerned or those in command over them.

(IRR, 1987: 83)

In spite of findings which suggested that in routine policing 'there is no widespread tendency for black and Asian people to be given greatly inferior treatment' (Smith and Gray, 1983: 127-8) and that 'prejudice does not significantly lead to differential or discriminatory police action *once a stop is underway*' (Norris *et al.*, 1992: 222), overall, there is little doubt that black people's confidence in the police is lower than white people's. It is likely that this is based largely on black people's perception of the police force as a racist institution where the unequal treatment of black people is deeply entrenched. For example, NACRO's study found that 'the overwhelming impression' gained from its informants was that 'black people had little confidence in getting fair treatment from the police' (NACRO, 1991: 15). Similarly, Herman Ousley, former chairperson of the Commission for Racial Equality, reflecting on a 1994 study of black people's attitudes to the police asserted that its findings conveyed:

a very powerful message for the police. Black people clearly believe policing in this country to be discriminatory.

(*The Weekly Journal*, 2 March 1995)

Pressing concerns continue to be raised about police handling of racist attacks and murders of black people. This is reflected in the comments of Neville Lawrence, father of the murdered teenager Stephen Lawrence, who, on the last day of the first part of the inquiry into his son's death accused the Metropolitan Police of 'ignoring lessons to be learned' from it (*The Guardian*, 19 September 1998). He warned that:

If there were no changes in the way police dealt with the black community, "people are going to turn more to violence"...He referred to the case of Michael Menson, a black musician who died after being found engulfed in flames in a north London street in February last year. Police initially thought he had tried to commit suicide despite his claims of being attacked. This week an inquest found he had been unlawfully killed, and his family accused the police of racism. Mr Lawrence said that this showed black families were not being listened to, and nothing had changed since his son's death in April 1993.

(*The Guardian*, 19 September 1998)

According to MacLaughlin and Murji (1999: 374), the Macpherson report provided further evidence which 'threw into stark focus the distrust of the police which exists in black and Asian communities in various British cities' which clearly highlights the issue of loss of confidence in the police and the complexities surrounding the official response to racial attacks and police racism:

Differences between the public relations presentations of senior police officers and the case histories of the different forms of xenophobic violence and police racism that people were experiencing in different localities were made glaringly obvious.

(McLaughlin and Murji, 1999: 374)

A further nail in the coffin of police-black relations transpired in the last days of the 1990s when Neville Lawrence, aged 57 and the father of Stephen Lawrence, was stopped and questioned by police with his cousin (in his 30s) about a street robbery. Following police clarification of the ownership of the vehicle in which the two men were travelling, they were free to continue their journey. It is interesting to note that this occurred only

three months after Neville Lawrence's statement about the lack of change in police treatment of black people since his son's death (see above) and in the month following his issue of writs together with Stephen Lawrence's mother, Doreen Lawrence, 'against 42 police officers involved in the murder investigation', including the outgoing commissioner, Sir Paul Condon'. Lawyers acting on behalf of Neville Lawrence lodged a complaint with the police complaints authority on the grounds that he was 'unlawfully stopped' since 'the officers lacked reasonable grounds' (*The Guardian*, 8 January 2000).

This incident exemplifies the vulnerability of black pedestrians and car drivers to police targeting and discriminatory stops by the police. It is no surprise that this remains one of the major concerns about 'race' and policing (see Chapter 12) and a key area of police-black conflict (see Chapter 1) highlighted by pressure groups. Commenting on the above incident, for example, Suresh Grover, spokesperson for a monitoring group campaigning against police harassment said:

It's disgusting that they stopped someone of Neville's stature for robbery. It shows stop and search is racist and arbitrary.

(*The Guardian*, 8 January 2000)

Chapter 3

Racism in the Courts?

That the liberal notion of the courts and the legal system as impartial and a bulwark between the state and the citizen is a myth is highlighted by the experience of the black community...The courts have therefore sanctioned the process whereby black people are defined by the state as a problem...Like the police, they have played their own part in the criminalisation, control and disciplining of the black community.

(Gordon, 1983: 116)

The vast majority of black defendants face juries who are often ignorant, bigoted and blatantly hostile to the defendant before the trial begin...Some of the worst miscarriages involved black defendants, but questions about the racism of the English judicial system were usually forgotten...Where there is unfairness, injustice and misconduct, you will inevitably find black people on the receiving end.

(Society of Black Lawyers as quoted in *The Guardian*, 1 May 1992)

Introduction

This chapter explores the position of black people after entry through the 'gate' at the outset of the criminal justice system to the courts and beyond, by examining various studies and relevant statistics which have considered how far black defendants receive fair and equal treatment in the courts or whether they continue to be subjected to discriminatory practices on the grounds of 'race'. The definition of racial discrimination is problematic for various reasons. Reiner usefully defines racial discrimination by the criminal justice system as 'differential handling of black people which is not justified with reference to legal standards' (Reiner, 1989: 10). Fitzgerald has explained discrimination as follows:

‘Discrimination’ need not be conscious or direct. Moreover, it can be a result of omission as well as commission. For example, it could arise if ‘the letter of the law’ was followed through in cases involving ethnic minorities, while more flexible use of discretion ensured that whites were treated with greater lenience.

(Fitzgerald, 1993: 37)

Taking into account the definition of racial discrimination in s.1 of the *Race Relations Act* 1976, discriminatory practices on the grounds of ‘race’ may be broadly defined as unfavourable treatment based on racial prejudice (see Chapter 1). Undoubtedly, problems arise in the definition and measurement of discrimination (Gelsthorpe, 1996: 128). Firstly, not all disadvantages experienced by minority ethnic groups is attributable to racial discrimination, even where these impact disproportionately on such groups. Secondly, such groups may not share a ‘common’ experience; and, thirdly, because racial discrimination may be ‘multi-faceted’, it being highly unlikely that any single research method could ever pinpoint the existence of ‘pure’ discrimination (Reiner, 1993).

Research in this field has been predominantly quantitative, and has produced contradictory and inconclusive findings. For example, Reiner has argued that quantitative data not only raises difficulties in statistical analysis where decisions have to be made regarding the scope of the ‘legally relevant’ variables to be included and ‘adequately measured and controlled for’, but also problems of interpretation (Reiner, 1989: 11; see also Hudson, 1989: 32). Whilst the use of more sophisticated statistical techniques in recent studies has yielded more convincing results, difficulties still arise. Qualitative research faces the same problem. Such studies have ‘found it even harder to pinpoint discrimination’, given the paucity of verbal admissions, and possible differences in demeanour between black and white suspects and defendants (Reiner, 1989: 11).

Notwithstanding these problems, in recent years public and official opinion has become more willing to acknowledge the existence of discriminatory practices in the court system. For example, Smith and Gray (1985) found that 38 per cent of black people

interviewed for a Policy Studies Institute Report in 1982 thought that 'blacks were treated by the courts worse than whites', and in 1991 a National Opinion Poll for *The Independent on Sunday*, 7 July 1991 found that the proportion of black people who held this view had risen to 57 per cent. During this period the proportion of white people who held this view trebled from 8 to 24 per cent in contrast to only 19 per cent of Asians (Hood, 1992: 9). Official recognition of discrimination and racism in the criminal justice was reflected in the implementation of the *Criminal Justice Act* 1991, s 95 which provides that the Home Secretary must publish annual information in order to avoid discrimination on grounds of 'race or sex or any other improper ground'.

According to Hudson the implementation of this legislation coincides with increasing loss of public confidence in the criminal justice system exacerbated by the disbanding of the West Midlands Serious Crime Squad, deaths and injuries of black suspects in police custody, and various miscarriage of justice, creating 'a climate of opinion in which greater recognition' of injustice caused by the criminal justice system has become possible (Hudson, 1993: ix). In June 1995, it was reported that the Lord Chief Justice endorsed a recommendation from the Criminal Justice Consultative Council, the umbrella group for criminal justice agencies:

for a comprehensive data collection system to identify where discrimination occurred...Lord Taylor hoped he was 'not being naive' in believing that the amount of active racism was very small. If it existed it must be rooted out and those engaged in it treated as harshly as disciplinary proceedings allowed.

(*The Guardian*, 1 July 1995)

This chapter examines how such data has been 'collected' to date and reflects on whether any 'data collection system' is capable of clearly identifying discrimination. The first section focuses on the treatment of black people in court up to the sentencing stage of the criminal justice process in relation to mode of trial and plea, prosecution and acquittal

rates and sentencing (see Chapter 5 on remands in custody). The second looks at the selection of juries, and the characteristics of predominantly 'white' criminal justice agencies and possible racist practices. It also examines how far such initiatives as 'race awareness' training has impacted on the legal profession, the magistracy and judiciary.

In Court

In addition to concerns about black people being identified as a problem in terms of *policing* (see Chapter 2), in recent years there has been growing concern about the role of the *courts* in perpetuating discrimination (see Gordon, 1983 chapter headnote). The ethnic origin of defendants appearing before the courts is not routinely recorded (Home Office, 1998: 10). Prison and some police statistics still remain the only official source of information on the ethnic origin of suspects, defendants and offenders.

Differential treatment towards black people by the police at the outset of the criminal justice process undoubtedly informs treatment at subsequent stages. As the Home Office has acknowledged, differential treatment at one stage 'may mean that members of the relevant ethnic minorities are disproportionately represented at the next stage' (Home Office, 1992a: 5). However, for example, as Hudson (1989) and Mhlanga (1997) record, it has proved difficult to pinpoint evidence of direct racial discrimination in research (see Chapter 6 headnotes). Nevertheless, the effects appear real enough being seemingly largely responsible for the over-representation of black people in the penal system.

Mode of trial and plea

The majority of criminal proceedings, about 98 per cent, are commenced and concluded in the magistrates' courts (Lord Chancellor's Department, 1994). Black defendants are more likely than whites to be tried at the Crown Court (Walker, 1989; Brown and Hullin, 1992; Home Office, 1992a: 15; Smith, 1997: 742). This has been

broadly explained by the tendency for black defendants to be tried for more serious offences, or because black defendants charged with triable-either-way offences are more likely to go to the Crown Court so they can be tried by jury (Fitzgerald, 1993: 20). Since the Crown Court is likely to impose harsher penalties than the magistrates' court 'any tendency for ethnic minorities to be tried in Crown Courts rather than magistrates' courts could lead to a relatively high rate of imprisonment for those groups' (Smith, 1994: 1078; Smith, 1997: 742).

A key issue as to whether a larger proportion of magistrates decline jurisdiction in cases involving black defendants remains contested. Shallice and Gordon (1990) found that black defendants were more likely to elect for trial by jury. While Brown and Hullin (1992) also found that committals to the Crown Court generally arose from the defendant's choice, they also suggest that this decision was more likely to be made by magistrates in the case of black defendants, which was largely confirmed by findings in Jefferson and Walker (1992).

Differences in plea as may also have some bearing on the court of trial, black defendants being more likely to plead not guilty which partly explains why they are more likely to be tried at the Crown Court (Home Office, 1992a: 15; Gelsthorpe, 1996: 131; Walker, 1989: 365–6). Hood's (1992) study on sentencing of five Crown Courts in the West Midlands found that 12 per cent more black defendants than white pleaded not guilty at the Crown Court. This confirmed findings on the London data in Walker (1989) which also raised the issue that higher unemployment rates among black defendants (as subsequently found in Hood, 1992) would increase their eligibility for legal aid, thus placing them in a better position to pursue their case in the Crown Court.

Prosecution and acquittal rates

Since its inception in 1985, the Crown Prosecution Service (CPS) has had the duty of determining whether criminal proceedings should be initiated or continued, but so far no research findings are available on the CPS and 'race' issues. However, there is some evidence to suggest that black people are more likely to be prosecuted than white people (see Chapter 2) and are also more likely to be eventually acquitted (Walker, 1988: 4556, 1989: 365; Home Office, 1989b; Home Office, 1992a: 15; Hood, 1992). A study in the London Borough of Brent found that young black male defendants were significantly more likely to be acquitted because of lack of evidence than their white counterparts (Mhlanga, 1997: xx).

Such higher acquittal rates may suggest that cases against black defendants are based on weaker evidence than those against white defendants. However, Smith has argued that 'massive bias at earlier stages might be complemented by additional efforts to construct cases against black suspects, and by further bias against them at the trial, leading to roughly similar acquittal rates for whites and blacks' (Smith, 1997: 745; see also 735 as quoted in Chapter 2). Therefore, whether higher acquittal rates for black defendants reflect bias against them at earlier stages of the criminal justice process remains contested.

Sentencing

Research on sentencing has produced some contradictory findings on the question of discrimination on the grounds of 'race'. The failure of early studies, such as McConville and Baldwin (1982), Crow and Cove (1984) and Mair (1986), to demonstrate a direct 'race' effect in sentencing has been largely attributed to various methodological drawbacks (Hood, 1992; Reiner, 1993; Hudson, 1993; Gelsthorpe, 1996). McConville and Baldwin's widely cited study on 4 Crown Courts in Birmingham and London (from random samples in 1975 and 1976, and 1978 and 1979 respectively) concluded that there was 'no evidence

of direct, systematic bias on racial lines in sentencing in the Crown Court' (McConville and Baldwin, 1982: 658). It has been criticised on the grounds that African-Caribbean and Asian defendants were not distinguished and no information was provided about the various proportions among the 'black' group (Brown and Hullin, 1992: 43); the methodology employed was inappropriate for the examination of whether judges' sentencing decisions exercised any 'racial bias' (Hood, 1992: 16–17); and that the numbers were too small to draw any firm conclusions (Mair, 1986 : 148).

Crow and Cove's (1984) study on 4 juvenile, 3 magistrates' and 2 Crown Courts in London, the Midlands, and the North of England in 1983 concluded that the handling of cases from the different ethnic groups was similar, and that similar sentences were imposed. It has been criticised on the grounds that: the sample was too small (Mair, 1986: 148; Hood, 1992: 14); the proportion of black defendants was too low; it failed to take into account any possible differences in sentences between the three types of courts in the survey (Mair, 1986: 148; Walker, 1989: 354; Hood, 1992: 14; Mhlanga, 1997: 137); and it failed to analyse the sample in terms of age (Hood, 1992: 14). Mair's study of adult offenders in two Yorkshire magistrates' courts in September to November 1983 and February 1984 found that minority ethnic defendants were less likely to receive probation, but more likely to receive a community service order than whites. Black defendants were also more likely to be ordered to attend a senior attendance centre, but less likely to be given a custodial sentence (Mair, 1986: 153). Mair acknowledges that his sample contained a small proportion of African-Caribbean (5.5 per cent) and Asian defendants (5.4 per cent), but points out that his total sample was only 300 smaller than that from which McConville and Baldwin (1982) drew their matched cases, and almost twice as large as that used by Crow and Cove (1984).

A Home Office survey on defendants charged with indictable offences in magistrates' and Crown Courts in the Metropolitan Police District (MPD) in 1984 and

1985 showed that in the magistrates' courts there was no significant difference in the types of sentences given among the different ethnic groups and no difference in the average length of sentences, whereas *at the Crown Court there were differences in the rates of custodial sentences and in the length of sentences imposed*: South Asians and young black males (aged 17–20) received much longer sentences than whites (Home Office, 1989a). Differences in the use of immediate custody in the Crown Courts (6 and 7 per cent more African-Caribbean defendants than whites and South Asians respectively) may be partly explained in terms of age and type of offences (see Smith, 1997: 745–6).

Other research in London, which monitored 4 magistrates' courts for eleven weeks in 1985, also found that there was no greater use of imprisonment by magistrates against black defendants as compared to whites (Shallice and Gordon, 1990: 31). It was suggested that the higher rate of custodial sentences for white defendants was mainly owing to their lower average number of previous convictions and greater likelihood of being in breach of suspended sentences as compared to black defendants. Again, this study cannot be criticised on the grounds of smallness of sample or the proportion of black and Asian defendants: out of a total of 2,397 cases, 24 per cent concerned African-Caribbeans and Asians. However, the researchers acknowledged that there were some omissions in the data since in three courts full details of defendants' previous convictions were not available (Shallice and Gordon, 1990: 9). A Home Office study which analysed data collected from 18 Crown Courts from June 1986 to February 1987, found that differences in the imposition of custodial sentences between the different ethnic groups could be accounted for by differences in offences and criminal history, but such differences were not significant. Significant differences between different ethnic groups were found in the use of non-custodial disposals (Moxon, 1988). However, the sampling in this study can be criticised because of its relatively small proportion of black (8 per cent) and Asian (5 per cent) defendants (Hood, 1992: 12).

Jefferson and Walker ‘followed through’ a number of cases on black, white and Asian male defendants from arrest to disposal in Leeds in 1987 and found that sentencing in the magistrates’ courts and Crown Court showed no significant differences in terms of ‘race’ (Jefferson and Walker, 1992: 94). Similarly, another study on adults in Leeds in 1988 found no *overall* significant difference in magistrates’ courts in the use of custodial sentences for African-Caribbeans, but they were *significantly more likely to be imprisoned for theft*. Differences in custodial sentences between African-Caribbeans and whites were attributed to factors other than ‘race’, especially those relating to defendants’ criminal history (Brown and Hullin, 1992: 51). The researchers admitted that the length of the sentences was not recorded, and that the method used to collect the data was not perfect since this depended on information supplied by court clerks who were already said to be ‘overwhelmed’ by their own work. This study can also be criticised on the grounds of the smallness of the proportion of black (6 per cent) and Asian (3 per cent) defendants, although this exceeds the proportion of such groups in the general population in Leeds. The findings of this study are particularly difficult to compare with other studies on sentencing because suspended sentences were included in the category of custodial sentences (see Brown and Hullin, 1992: 45, 50).

Unlike almost all of the findings in the research above, the studies below *have* found evidence of more severe black custody rates, and, although methodological difficulties have still arisen, some of the more recent studies have used more sophisticated statistical methods to try to isolate the ‘race’ effect in sentencing. Walker analysed the outcome of MPD prosecutions of males aged 14–16 in London courts mainly charged with indictable offences. Sentences in the magistrates’ courts were similar for the different racial groups, however, proportionately more black defendants were tried in the Crown Court where a higher proportion received a custodial sentence. This study cannot be criticised for smallness of sample (5,480 cases, 96 per cent of which were tried in magistrates’ courts),

or for having a small proportion of black and Asian defendants (24 per cent black and 3 per cent Asian in the magistrates' court; 28 per cent black in the Crown Court). However, Walker acknowledges that the main drawback of the research was that data on certain legal variables was not included (Walker, 1988: 459).

Walker's further analysis of MPD prosecutions on males in the 17–20 and 21–25 age groups, which represented a total of 16,684 (25 per cent black and 2 per cent Asian defendants) and 10,957 (22 per cent black and 3 per cent Asian defendants) respectively, also cannot be criticised in terms of smallness of the sample or the proportion of black and Asian defendants. In the magistrates' courts slightly more black than white defendants in both age groups were given an immediate custodial sentence (the difference of about 2 per cent being just significant), but Asian defendants had a significantly lower rate. The mean sentence length in the magistrates' courts did not differ significantly between black, Asian and white defendants. In the Crown Court little difference was found as between black and white defendants in terms of the type of sentence imposed, but custodial sentences for black defendants were significantly longer (Walker, 1989: 360). However, in the Crown Court defendants' 'race' was not recorded in nearly 10 per cent of cases, and details of previous convictions were unknown (Walker, 1989: 366).

Tipler's study on all criminal cases from October 1984 to March 1985 in the Hackney Juvenile Courts in East London found that a higher proportion of young males from black and minority ethnic groups were given custodial sentences. Although the sample was relatively small, 343 cases concerning 269 individuals, a large proportion was black (30 per cent) with some Asian (6 per cent). However, it was acknowledged that some key factors were not taken into account in the analysis (Tipler, 1985: 7). In West Midlands Probation Service (1987), which analysed data from juvenile, magistrates', and Crown Courts in Birmingham in 1986, black defendants (35 per cent) were found to be more likely to get an immediate custodial sentence as compared to white (21 per cent), but

less likely to receive probation. However, the sample of 222 can be criticised for being too small, and for failing to distinguish between people of African-Caribbean, Asian and African origin (Hood, 1992: 17), although the total categorised as 'black' amounted to 24 per cent.

In Hudson's study on courts covered by the Middlesex Probation Service from 1986–89, data was collected on 8,000 defendants by court probation officers (completing standard survey forms including various legal and non-legal variables) and analysed by statistical software, including the use of multiple regression. The differential sentencing pattern which emerged for African-Caribbean defendants could not be solely attributed to offence seriousness or other factors (Hudson, 1989: 27). African-Caribbeans were under-represented in probation and community service at all courts, and over-represented amongst sentences of immediate imprisonment at 2 of the Crown Courts. This was largely attributable to higher black unemployment rates (Hudson, 1987: 25, 41). African-Caribbean males were unlikely to receive probation, but more likely to receive community service or custody than white males. This suggested that sentencing for black defendants was 'more interventionist' than for white so that black offenders go through 'the non-custodial options more quickly' than their white counterparts (Hudson, 1989: 29).

Hudson's position as Research and Information Officer meant that many problems of access to information were avoided. This study cannot be criticised in terms of smallness of sample or proportion African-Caribbean and Asian defendants (27 per cent and 5 per cent respectively in the 3 Crown Courts), but it can be criticised for neglecting to report the findings in sufficient detail. For example, the significance of any differences found was not specified (Hood; 1992: 13–4). Voakes and Fowler's (1989) analyses of all pre-sentence reports prepared for Leeds Crown Court and Bradford Magistrates' Court from April to July 1987 showed that African-Caribbeans and Asians were more likely to be given a fine or a custodial sentence than whites. A large sample of 663 reports were

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examined, but the proportion of black defendants was small: 5 per cent African-Caribbean, 4 per cent 'mixed race', and 11 per cent Asian.

It has been argued that English studies failed to 'demonstrate a direct race effect in sentencing' until Hood's (1992) research (Hudson, 1993: 6, 8). Out of a total of 5,800 males and 490 females on trial or appearing for sentence in 1989 at 5 Crown Courts in the West Midlands, 25 per cent of males and 19 per cent of females were from minority ethnic groups. Sentences imposed on them were compared with an adequately large sample of white defendants who had been convicted and sentenced in the same year dealt with by the same courts (Hood, 1992: 25-6, 31). Sophisticated techniques of statistical analysis, including a multivariate 'matching' method, enabled Hood to develop a 'probability of custody score' based on all the male cases in the sample. This allowed for greater statistical significance and reliability in the findings since it took into account and gave weight to the complete range of variables for all ethnic groups and enabled various statistical models to be made (Hood, 1992: 65-8, Appendix 2). Hood's main findings were as follows:

- 1 for the sample as a whole, 8 per cent more black defendants were sentenced to custody than whites (56.6% v 48.4%), whereas Asians were sentenced to custody less often than for either whites or blacks (39.6%) (Hood, 1992: 194-5);
- 2 when the nature of the offence, criminal history, personal and social characteristics, and the legal processes that the cases had gone through were taken into account, the proportion of the black: white difference sentenced to custody was reduced to about 2.5 percentage points: given that the white custody rate was just under 50 per cent this amounted to a 5 per cent greater probability of black male adult defendants being sentenced to custody than white, however, no difference was found for defendants under 21 years (Hood, 1992: 198-9);
- 3 for males in medium to high range risk cases, a significantly higher proportion of black defendants were sentenced to imprisonment, a difference amounting to 13 per cent greater probability of a black than a white defendant receiving a custodial sentence, which supported the hypothesis that '*race*' was *influential in less serious cases where the court could more readily use discretion* (Hood, 1992: 84);
- 4 on average and for different ethnic groups there were variations in the use of custody as between different judges, not all of whom sentenced more black defendants to custody than whites (Hood, 1992: 47, 195);

- 5 black and Asian defendants were less likely to have had social enquiry reports prepared or to be recommended for probation than whites; where probation was recommended for black defendants, the likelihood of it been imposed was less likely for black than white defendants (Hood, 1992: 204–5);
- 6 a remand in custody prior to sentence was a good predictor of a custodial sentence being imposed, a higher proportion of black males (26 per cent) than white (20 per cent) or Asian (18 per cent) having been remanded in custody (Hood, 1992: 205; see Chapters 3 and 5);
- 7 a significantly higher proportion of black (17 per cent) and Asian (15 per cent) adult males as compared to white (10 per cent) had sentences of more than three years imposed;
- 8 such differences in average sentence lengths were only significant for defendants pleading not guilty;
- 9 when the seriousness of the case was taken into account there were no significant differences in average sentence lengths for defendants under 21 (Hood, 1992: 202);
- 10 when offence type and other relevant variables were taken into account, there was no difference between black female and white female custody rates (Hood, 1992: 206–7).

Furthermore, the significance of the impact of racial stereotyping (see Chapter 1) was highlighted:

When one contrasts the overall treatment meted out to black Afro-Caribbean males one is left wondering whether it is not a result of different racial stereotypes operating on the perceptions of some judges. The greater involvement of black defendants in street crime and in the trade in cannabis, their higher rate of unemployment, their greater resistance to pressures to plead guilty, and possibly a perception of a different, less deferential, demeanour in court may all appear somewhat more threatening. And, if not threatening, less worthy of mitigation of punishment.

(Hood, 1992: 188–9)

Similar to findings in this study on bail (see Chapter 8), Hood's research drew attention to the key role of *discretion* for black defendants in less serious cases (see 3 above). It also uncovered persuasive evidence not only in relation to direct discrimination, but also in relation to indirect discrimination. As Fitzgerald has pointed out, Hood's findings add to other evidence on 'race' and criminal justice which:

strongly suggests that, even where differences in social and legal factors are taken into account, there are ethnic differences in outcomes which can only be explained in terms of discrimination. And he raises the further possibility that apparently legitimate 'legal' considerations (in particular penalties associated with not guilty pleas) may themselves constitute indirect discrimination ... he highlights the extent to which black defendants are penalised because they fail to benefit from the 'discount' afforded to defendants who plead guilty.

(Fitzgerald, 1993: 31)

Hood's research has been hailed as providing the 'clearest evidence to date that race has in some circumstances an effect on sentencing independent of other factors' utilising the largest sample of Crown Court cases ever studied in England (Dholakia and Sumner, 1993: 36-7; see also Fitzgerald, 1993: 30). It has been argued that its strength is largely owing to the use of 'far more powerful analytic methods, so it is at present the best available source' of extensive information on sentencing in the Crown Court (Smith, 1994: 1084). It has also been argued that notwithstanding possible definitional problems concerning the categorisation of ethnic groups in Hood's (1992) study and problems in relation to sampling and generalizability (since only Crown Courts were analysed) raised by Halevy (1995), it is significant because it provides further evidence of racial discrimination in the criminal justice system, and demonstrates the complex nature of this problem (Gelsthorpe, 1996: 135).

In an appraisal of Hood's study, von Hirsch and Roberts acknowledge that it amounts to 'the most sophisticated attempt to date to understand the influence of race upon the determination of sentence'; the approach of some previous studies which merely compared black and white custody rates is 'manifestly flawed' because such groups may have important differences, for example, the extent of their previous convictions (von Hirsch and Roberts, 1997: 227). They also reflect on the debate on the validity of the study between Hood (1995) and Halevy (1995).

Halevy criticized Hood's (1992) study on the grounds that his findings on differences in custody in terms of 'race' did not conform to the conventional level of statistical

significance of 0.05 (Halevy, 1995: 269-70) which means that there is a 1 in 20 chance that the observed result only amounts to a random result rather than a true experimental effect (von Hirsch and Roberts, 1997: 228; see also Rose and Sullivan, 1996: 136, 169 as cited in Chapter 7). Von Hirsch and Roberts argue that this was not a 'telling criticism', because Hood's (1992) level of statistical significance of 0.07 (which means that there is a 1 in 14 chance that the observed result only amounts to a random result rather than a true experimental effect) was not invalid given, as Hood points out (1995: 276-7), the '0.05 threshold' is 'only a convention in current social science scholarship'. Moreover, his findings in relation to the 'custody differential' and its significance level relates to *all* of the sentenced cases from the 5 Crown Courts in the sample, but focusing on the court which showed 'the most marked custody differential' (Dudley Crown Court) 'would raise the statistical significance to a level better than the 0.05 level upon which Ms Halevy insists' (von Hirsch and Roberts, 1997: 228-29).

In addition to this, von Hirsch and Roberts question Halevy's reasoning that this convention should have been followed in this instance since great caution should be taken, firstly, because racial discrimination is 'so politically charged'; and, secondly, because the 'potential ramifications are too severe to allow a claim of discrimination to be levelled at Crown Court judges' (Halevy, 1995: 270). As they aptly point out, it is difficult to see:

why concerns over political controversy or the good name of the courts should be deemed more important than concerns about racial justice.

(von Hirsch and Roberts, 1997: 229)

Halevy (1995: 269-70) also criticizes Hood's (1992) study on the grounds that he may have excluded relevant variables (such as 'employment status' which was initially excluded) from the analysis which may have dissipated the custody differential against black defendants at Dudley Crown Court. Again, as von Hirsch and Roberts convincingly

argue, even when this variable *was* subsequently included in the analysis the custody differential remains between black and white defendants as Hood (1995: 275) has countered (von Hirsch and Roberts, 1997: 229).

According to von Hirsch and Roberts, the study 'offers interesting hints about the effects of certain specific race-related factors' in relation to sentencing, however, partly because information gathered by the researchers was restricted to that taken from Crown Court files and permission to interview judges was denied, it fails to shed much light on 'the specific mechanisms of racism' (von Hirsch and Roberts, 1997: 230). Finally, they reiterate that, overall, Hood's (1992) study reached unparalleled levels of methodological sophistication and experimental validity, and conclude that:

There appears to be little cause to doubt the study's principal finding, namely that there is at least a *prima facie* case of possible discrimination effects. We would disagree with Ms Halevy's (1995) assertion that the study has 'dubious conclusions' (p.267). The effect, however, is restricted to male, adult defendants sentenced at some, but by no means all, courts in the West Midlands area, over a period in 1989 ... As the study's author notes, if many other courts have similar practices this could have a significant impact on the racial ratio of the custodial population in Britain.

(von Hirsch and Roberts, 1997: 230)

Mhlanga analysed data on all male defendants aged 10-17 years arrested between May 1983 and July 1986 in the London Borough of Brent. Referrals and outcomes were analysed on 1,682 cases: 43 per cent black and 4 per cent Asian as compared to 50 per cent white (Mhlanga, 1997: 48, 56-7, 137). He found that young black and Asian defendants were more likely to have received a custodial sentence, than their white counterparts who were more likely to have been cautioned by police. The difference between the probability of receiving a custodial sentence was much wider and more significant between black and white defendants than between black and Asian defendants, but the difference between Asian and white defendants was narrower (Mhlanga, 1992:

131–2). In addition to the sophisticated multivariate analysis in this study, its strengths were that: the sample size was 100 per cent and drawn from the area with the highest proportion of minority ethnic groups in the UK; the difference between the combined sample size of minority ethnic groups and white defendants was very small; and that it was conducted over a five-year period. Moreover, Mhlanga's position as a social worker enabled him to obtain *qualitative data* on policy and practice on youth justice through participant observation (see also Chapter 2). These factors enhanced the validity of the generalizable conclusions drawn (Mhlanga, 1992: 138–40). This study also included a *theoretical perspective* on models of youth criminal justice (see Mhlanga, 1997: 20–8).

Overall, studies on sentencing suggest that court decision-making on the disposal of cases should not be viewed in isolation from other stages in the criminal justice system, given the inter-action and compounding of decisions by criminal justice agencies and other relevant bodies. However, different methodological approaches employed in these studies and the different courts (and different benches within the courts) targeted for such research has made comparisons of conclusions problematic. In spite of such methodological deficiencies, it has been argued that, overall, studies on sentencing have uncovered 'sufficient evidence to support the case that unequal and unfavourable treatment of black defendants exists' (Shallice and Gordon, 1990: 36). Nevertheless, methodological problems pervading many sentencing studies have lead to 'grave doubts' about the validity of their findings in relation to whether minority ethnic defendants were disadvantaged 'when all relevant factors had been taken into account' (Hood, 1992: 21). Four major weaknesses in sentencing studies have been identified:

- a the vast majority failed to include any qualitative evidence (see Hudson, 1993: 46; notably Jefferson and Walker [1992] above did include analysis of qualitative data from interviews with members of a Juvenile Case Referral Panel, and with solicitors about the treatment of minority ethnic defendants, and also from a comparative survey of black, white and Asian respondents on attitudes towards the police and experiences of treatment by the police – see also Chapter 4)
- b most studies were largely atheoretical (see Hudson, 1989: 31–2);

- c several studies analysed samples and/or included proportions of defendants from minority ethnic groups which were too small (Hood, 1992; Hudson, 1993; Mhlanga, 1997);
- d several studies did not incorporate a multi-factoral approach (see Walker, 1987; Hudson, 1989; Hood, 1992; Fitzgerald, 1993: 29; Mhlanga, 1997: 147; von Hirsch and Roberts, 1997: 227).

In relation to the latter, save for some break-down of the data in terms of 'race', age and/or sex, other relevant legal and non-legal variables were largely not taken into account (see Mhlanga, 1997: 58). It became apparent that in order to convincingly isolate a 'race' effect in sentencing data, multivariate analyses needed to be undertaken by means of more sophisticated statistical techniques such as those in some American studies (for example, see Hood, 1992: 18–9). Recent research, which has largely redressed previous methodological inadequacies by employing sophisticated statistical analyses, has revealed strong evidence that discrimination on the grounds of 'race' operates in sentencing in English courts when relevant variables are taken into account (Hudson, 1989; Hood, 1992; Mhlanga, 1997).

Juries and criminal justice practitioners: racist practices and racial awareness

Black people have been consistently denied the right to be tried by their peers. There is a low proportion of black jurors in the Crown Court, and black magistrates in the lower court. Neither are black people sentenced by their peers owing to the paucity of black magistrates and judges.

In the 1990s, minority ethnic groups continue to be under-represented among stipendiaries, justices' clerks, court clerks and judges, but not among Crown Prosecutors, probation officers, solicitors, barristers and lay magistrates. Nevertheless, such groups remain heavily under-represented at management level in criminal justice agencies and in the higher echelons of the legal profession (Home Office, 1996a: 22–23, 1998: 37–38).

The implications arising from such a racially-imbalanced structure in the criminal justice system was reflected NACRO's findings (see Chapter 2) that:

black people were very aware that the courts were dominated by white personnel. Black faces in court tended to be those of other defendants, and occasionally a black lawyer or usher...The over-riding perception of black people was that of being judged by white society.

(NACRO, 1991: 44)

However, even if representation in the criminal justice system was more proportionate in terms of 'race', this may not guarantee fairer and more just treatment for minority ethnic groups. In order to serve the interests of such groups, representation should not just be 'descriptive' but should also be 'substantive'. It must advance the interests of those represented (Pitkin, 1967; Swain, 1993: 221).

The selection of juries

A study in the late 1970s found that black people were immensely under-represented in 720 juries in London and Birmingham (Baldwin and McConville, 1979), but as Gelsthorpe notes, research on juries has been limited. Findings in Zander and Henderson (1993) suggested that neither women nor minority ethnic groups were 'badly under-represented', whereas in Padfield (1995) it was found that there were no people from minority ethnic groups in 65 per cent of cases, while in one case there were no white jurors. In the absence of recent detailed research, the impact of factors such as age, sex, 'race' or class remains unknown (Gelsthorpe, 1996: 125–6).

Prior to the loss of the right of peremptory challenge in 1989, according to Gordon black defendants had the right 'to try to achieve a multi-racial jury' and 'to exclude those who may be prejudiced or hostile to black defendants'. He argues that 'hostility to the jury system from judges, senior police officers and politicians' developed following the

acquittal of black defendants in various well-publicised cases in the 1970s and 1980s leading to the reduction of the right to elect for jury trial, police checks on jurors' backgrounds, and the curtailment of the peremptory challenge (Gordon, 1983: 106–11).

Notwithstanding the limited success in achieving a more racially-balanced jury in some trials of black defendants, under-representation of black people on juries has continued, or may even have worsened, since the defence's loss of the right to the peremptory challenge (Skellington and Morris, 1992: 104). Furthermore, in 1989, the Court of Appeal held that there is no right to a multi-racial jury (*R v. Ford* [1989] QB 868, as quoted in Gelsthorpe, 1996: 125). The former chairperson of the Society of Black Lawyers, Peter Herbert, in a submission to the Royal Commission on Criminal Justice in 1992, pointed to parallels between miscarriages in the English courts and the acquittal of four Los Angeles police officers charged with beating a black motorist, Rodney King, the verdict in this case following a decision to switch the trial to an area where the jury contained no African-Americans. He argued that a similar situation is commonplace in England where black defendants often found their cases transferred to courts in areas where the black population was low (*The Guardian*, 1 May 1992).

The Royal Commission on Criminal Justice (1993) responded to questions raised about the selection of jurors and the need for the composition of juries to reflect a multi-racial society by stating that 'race' *should* be taken into account in some cases. It was suggested that applications for a multi-racial jury (for up to three members from minority ethnic groups) before trial should be able to be made by the prosecution or the defence where it was 'reasonable because of some special feature': an important consideration being whether jurors' backgrounds would make any difference to the verdict. However, in 1995 the Lord Chief Justice Taylor remained opposed to:

quotas for ethnic minority jurors in cases with a racial element as the 'thin edge of a particularly insidious wedge', nibbling away at the random selection of jurors.

(*The Guardian*, 1 July 1995)

It will be interesting to see whether proposed changes to the selection of juries in the *Mode of Trial Bill*, if implemented, will have a significant impact on the position of minority ethnic groups in Crown Court trials. Commenting on the bill in a speech to the Institute of Public Policy Research, the Home Secretary, Jack Straw, was reported to have said that it was:

Just one part of a much broader package of measures we are introducing to modernize the criminal justice system and drive down crime.

(*The Guardian*, 13 January 2000)

The role of Crown Prosecutors

Questions have been raised about the quality of information provided by the police to the CPS which forms the basis for prosecutors' decisions on charges and bail (see *The Independent*, 11 June 1997). However, no research findings have yet become available on the question of possible 'race' discrimination in CPS prosecution rates (Reiner, 1989: 15; Fitzgerald, 1993: 33). This has been identified as a relevant area for further research (Mhlanga, 1997: 146), particularly in view of evidence that black people are initially *prosecuted by the police* at a higher rate than white (see Chapter 2).

In addition to concerns about the CPS and possible discriminatory practices against *black defendants*, concerns have also been raised about its handling of cases involving *black victims* of racist attacks. For example, in the Stephen Lawrence murder, where charges were dropped against suspects in July 1993, the CPS' handling of the case was criticised by the Lawrence family (*The Guardian*, 12 September 1995). The impartiality of

the CPS in relation to minority ethnic groups, and the tendency for the CPS to follow police-decision-making, has also been called into question in relation to decisions not to prosecute police officers after *deaths in custody of members of minority ethnic groups*: for example, in the cases of Shiji Lapite (a Nigerian asylum-seeker), and Richard O'Brien (an Irish traveller), both of whom died of asphyxiation while being restrained by police (*The Guardian*, 9 and 26 July 1997).

Probation practice

Evidence from studies in the 1980s (Whitehouse, 1983; Pinder, 1984; Waters, 1988) suggested that pre-sentence reports reflected racial stereotypes. As Smith has pointed out, the contents and conclusions of such reports prepared by probation officers 'may be expected to reflect the cultural and value perspective of those professionals, who are overwhelmingly white' since they do not rely on formal criteria (Smith, 1994: 1097). However, there was evidence to suggest that the *absence* of the preparation of a report prior to the *Criminal Justice Act* 1991 (which provides that reports are mandatory in cases where a custodial sentence is being considered) was higher in the case of minority ethnic defendants. This tended to place such defendants at a disadvantage because it may decrease chances of a community penalty being imposed where defendants are found guilty. The reason why no report was prepared was mainly because such defendants were more likely to plead not guilty (Moxon, 1988; Voakes and Fowler, 1989). This also tends to explain why African-Caribbean defendants were less likely to receive probation where a non-custodial sentence is imposed by the court 'since there will be no recommendation to this effect from the Probation Service' (Fitzgerald, 1993: 28).

The National Association of Probation Officers (NAPO) (1989) reported that black people were less likely than whites to be subject to a recommendation in a pre-sentence report, less likely to be referred for a report, and less likely to be recommended for

probation. However, black people were more likely to be recommended for community service which was more likely to be breached, resulting in greater risk of receiving a custodial sentence earlier than their white counterparts. In a subsequent report, NAPO/Association of Black Probation Officers (ABPO) found that black people still remained less likely to have pre-sentence reports prepared because they are more likely to plead not guilty at an earlier stage in the prosecution process. This reflects 'the distrust and lack of confidence that many black defendants have in the system' (NAPO/ABPO, 1996:7). Commenting on the report's findings, Harry Fletcher, assistant general secretary of NAPO, concluded:

Despite greater attention to ethnic minority interests, the system has not really changed.

(The Guardian, 12 August 1996)

Qualitative studies point to bias in reports being manifested in terms of 'inappropriate language or assumptions' (Gelsthorpe, 1996: 132). For example, in Whitehouse (1983) it was found that the negative depiction of black families in pre-sentence reports increased the probability of custodial sentences being imposed on juvenile offenders, and that black offenders were viewed as 'hostile and aggressive' and more reluctant to 'change to non-criminal lifestyles' than white offenders (Hudson, 1988). Others argue that detecting racism in reports should not simply involve the analysis of their contents but should also examine how they are produced, for example, the allocation of reports, and the impact of home visits (Gelsthorpe, 1992).

As noted in NAPO (1989) above, black people are less likely to be made the subject of probation orders than their white counterparts (see also Moxon, 1988; Hudson, 1989). Overall, the greater likelihood of black defendants being recommended for community service rather than being fined, placed on probation or discharged than white, can lead to

the higher likelihood of a custodial sentence in case of breach of the order and/or subsequent conviction, and add to the general trend towards the *up-tariffing* of black defendants. Therefore, the discretionary nature of the probation service's role can be said to interact with that of court decision-making on bail and sentencing. Instances of discrimination on the grounds of 'race' occurring in probation service practices may add to and/or facilitate discriminatory practices by the court.

The legal profession, magistrates and judges

Unlike members of the magistracy and the judiciary (see below), barristers and solicitors are thus far not required to attend any 'ethnic awareness' training sessions, although this alone would not guarantee any fairer treatment for members of minority ethnic groups. Similarly, a larger proportion of black lawyers would not automatically lead to fairer treatment for black defendants unless such representation was 'substantive' (see Pitkin, 1967; Swain, 1993: 221 above).

King and May's study in 1983 found evidence of racial prejudice among some members of the Lord Chancellor's Advisory committees and sub-committees responsible for the appointment of magistrates, and evidence of racial discrimination in procedures adopted and the criteria applied by the selectors of magistrates'. Little or no effort was made to increase the proportion of black representation on lay benches and very few black people came forward as candidates for the magistracy in some areas with a large black population. About a fifth of black magistrates interviewed were critical of the selection process for magistrates (King and May, 1985). Following this study, the Lord Chancellor made a public commitment to make the magistracy 'more representative of local populations', but in the early 1990s the number of magistrates from minority ethnic groups remained at 2 per cent (Smith, 1994: 1099; see also Home Office, 1992a: 23). 7 per cent

of lay magistrates were appointed from minority ethnic groups in 1996; this decreased to 4 per cent in 1998 when there were also only 6 stipendiary magistrates.

In addition to the implementation of *The Criminal Justice Act* 1991, s. 95 (requiring the annual publication of information considered expedient for facilitating the non-discriminatory performance of persons engaged in the administration of criminal justice), as Mhlanga has pointed out, another example of official concern about 'race' issues and the low proportion of magistrates from minority ethnic groups was reflected in the Home Office Circular 38/1991, *Magistrates' Courts Service: Race*. This requests annual surveys of the ethnic background of all magistrates' courts committee members and staff. Furthermore, concern about the provision of anti-racist training was reflected by the issue of the Judicial Studies Board's paper: *An Introduction to Ethnic Awareness Training* in 1991 to trainers of lay magistrates (Mhlanga, 1997: 147). The effectiveness of such measures remains difficult to establish. Seminars on 'race' issues for Magistrates' training officers were held in 1993, but the Home Office acknowledged that the consistency of such training would require a more extensive programme (Home Office, 1996: 5). From September 2000 all magistrates would have to face compulsory 'race-bias tests' as part of 'the Magistrates New Training Initiative' introduced following the Stephen Lawrence Inquiry (*The Independent*, 30 May 2000; see below).

The judiciary has been criticised for comprising appointees drawn almost exclusively from middle/upper-class backgrounds, and predominantly educated at public schools and Oxbridge. Coupled with their insular training and professional etiquette, this has resulted in their inability to make neutral and politically-free decisions. These predominantly middle-aged/elderly white male judges are heavily influenced by values and beliefs specific to their own class interests (Griffith, 1985). In the 1980s, concern was raised about the small proportion of judges at any level from the ethnic minorities, and lack of training in 'race' issues (NACRO, 1986, Chapter 3 cited in Reiner, 1989: 10). By 1992,

there were only 3 [circuit] judges, 7 recorders and 7 assistant recorders from minority ethnic groups (Home Office, 1992a: 23); by 1998 this increased slightly to 5 circuit judges, 13 recorders, and 13 Assistant recorders (Home Office, 1998: 37).

According to the Labour Research Survey 1987, 70 per cent of judges had received private education, and 80 per cent attended Oxbridge. By 1998 this rose to '80 per cent ex-public school and 88 per cent Oxbridge graduates', and that there were still no minority ethnic groups represented in the judiciary above the position of circuit judge. The first public advertisement for the job of High Court judge in early 1998 had noted that, 'the Lord Chancellor will recommend those who appear to him to be best qualified regardless of ethnic origin', however, only those serving as a circuit judge for two years or who have been a barrister for 10 years with rights of audience in the High Court are eligible to apply (*The Guardian*, 25 February 1998). This requirement continues to prove difficult for applicants from minority ethnic groups to comply with.

Seminars for judges on 'ethnic minority issues' commenced in 1994 (Home Office, 1996a: 5), but such moves towards 'ethnic awareness' have been described by the chairperson of the Society of Black Lawyers as 'a pathetic attempt to tinker with the system', particularly in view of certain racist remarks made in open court by judges in recent times (*The Weekly Journal*, 2 March 1995). In 1999 the 'equal treatment bench book' to guide magistrates and judges 'on how to address members of ethnic minorities in court and to deal with sensitive race issues' was published by the Judicial Studies Board. Compulsory testing of magistrates 'to discover whether or not they are racist' to be introduced in 2000 formed the first part of a plan designed 'with the backing of the Lord Chancellor's Department' in order 'to assess the attitudes of all parts of the judiciary towards ethnic minorities' (*The Independent*, 30 May 2000; see above).

Notwithstanding the notion that impartiality is the 'guiding philosophy' of the English legal system (see Gelsthorpe, 1996: 120), the neutrality of the judiciary has been

questioned, particularly in relation to minority groups (Griffith, 1991: 328). This also raises issues about the basic principle of 'equality under the law' which would ideally not permit the less favourable treatment of certain groups in society, and calls into question 'how far different ethnic groups are treated equally' (Smith, 1994: 1042).

Disadvantaged groups, and particularly black people, may be more vulnerable to the effects of magisterial and judicial bias, and, ultimately unequal treatment, than white people largely because of less favourable discretion in court decision-making. According to Smith, although there is 'some evidence of bias' against black people at various stages of the criminal justice process, such as in the prosecution of juveniles and sentencing in the Crown Court, it is 'not entirely clear-cut' (Smith, 1997: 750). Arguably for black defendants the existence of any such tendency could lead to differential and discriminatory practices resulting in 'more interventionist' outcomes in the criminal justice process (see Hudson, 1989: 29 above), the up-tariffing of sentencing options, and ultimately higher custody rates. Similar to the position with policing, the effect of such differential treatment for black defendants in the courts could also contribute to the engineering of the disproportionate criminalization of black people (see Gordon, 1983 in chapter headnote; see also Chapter 4).

Given the discriminatory practices experienced by many black people specifically in relation to policing (see Chapter 2), it would not be surprising if confidence in the criminal justice process as a whole were even further diminished as a result of black defendants persistently facing all-white juries, predominantly white court personnel, and what can be readily perceived as unequal treatment in the court system (see SBL in chapter headnote). As Hood has pointed out referring to the conclusions from his research:

It will not be possible any more to make the claim that all the differences in the treatment of black offenders occur elsewhere in the criminal justice system. At least some of it occurs in the courts, and more often in some localities than others.

(Hood, 1992: 190)

In spite of the various difficulties in empirical research in isolating 'race' as a key factor influencing decision-making in the criminal justice process, there are strong indications that the existence of racism in the courts is a probability rather than just a possibility.

Chapter 4

‘Race’ and Crime: Theoretical Perspectives

Criminalization is the logical outcome of the racialization of British society ... this process of racial criminalization is in part consonant with the restructuring of the British economy in the past decade ... it lends a legitimacy to the measures of social control this restructuring requires ... the very reproduction of racial divisions in society is in part a function of this process.

(Keith, 1993b: 232)

*I have never built a monument higher than a mudhut
Nor woven a covering for my body other than the passing
leaves of the grass
I am the subman
My footprints are nowhere in history.*

*This is your statement, remember, this is your assessment
I merely repeat you
Remember this too, I do not ask you to pity me ...*

*I have won many bitter battles against you and shall win
them again
I am Toussaint who taught France there was no limit to
liberty
I am Harriet Tubman flouting your torture to assert my
faith in man's freedom
I am Nat Turner whose daring and strength always defied
you
I have my yesterdays and shall open the future widely before
me.*

(from Blackman, 1952)

Introduction

Explanations of the over-representation of black people in the sentenced and remand prison population are diverse and contestable. Furthermore, some commentators have argued that issues relating to ‘race’, crime and justice have remained largely under-theorised, ignored, distanced or misconstrued (similar to the pre-feminist position of

women and crime). This chapter thus examines how the issues of racism/discrimination in relation to criminal justice have been 'explained' theoretically.

In fact much criminological research has been empirical rather than overtly theoretical. This is reflected in the literature review of studies on policing and the courts addressed in Chapters 2 and 3 above, a large proportion of which emanate from the *administrative criminology* tradition. This focuses on practices of the court and criminal justice practitioners. According to Young, 'the aetiological crisis' in mainstream criminology revolving around the causes of crime resulted in the emergence of radical criminology, and also what he termed the new 'administrative criminology' (Young, 1986: 4; see also 1988: 289). As Hudson has pointed out, firstly, this term became commonly used in criminological terminology in the 1980s; secondly, given that administrative criminology represents research commissioned by the Home Office or non-governmental agencies, it developed from the concerns of 'practice and policy' rather than those of 'scholarly curiosity or theoretical debate'; and, thirdly, its interest in 'race' issues has largely focused on 'whether or not criminal justice and penal system agencies and processes discriminate against people on account of their skin colour or ethnic affiliation' (Hudson, 1993a: 5–6).

Reiner (1989: 17; 1993: 14) argues that essentially there are three key competing theoretical positions which currently occupy analyses of 'criminal justice system discrimination and black crime':

- 1 individualist explanations;
- 2 cultural explanations;
- 3 structural explanations.

This chapter develops the basic classification that Reiner (1989, 1993) has proposed by critically examining the key theoretical positions of neo-conservatism, critical

criminology and left realism. The neo-conservative and left realist approaches are characterized by individualist/cultural explanations which suggest that disparity results from a higher propensity to criminality on the part of black people. The latter in particular attempts to explain discrimination in the criminal justice process in terms of a combination of criminal propensity and discriminatory criminal justice practices. Critical criminology is characterized by structural explanations which suggest that disparity results from institutionalised racism reproducing social divisions.

These three criminological approaches are explored since they occupy key positions in contemporary 'race' and crime debates. It is not the intention to cover the whole field of 'race' and criminological theory and issues related to gender are not addressed in detail.

Neo-Conservatism

Traditional conservatism arose as a reaction to the French Revolution and was opposed to the individualism and rationalism of capitalism. It emphasised the organic nature of society and defended the traditional order (Nisbet, 1944, 1952). Conservatism rejects liberal and positivist and social democratic ideas of reform, and emphasises individual responsibility, self-control, morality, deterrence and harsh punishment of criminal behaviour. Lack of self-control and individual responsibility are deemed to be the root cause of criminality. Coercion, especially against the lower classes (thought to be the most likely to engage in criminal activity), to ensure that social order can be maintained is viewed by conservative criminologists as a necessary and inevitable part of capitalism.

Conservatism, like classicism, upholds the notion of free-will, but as Young points out, it also stresses that each person has 'free choice *and* powers of restraint' which must be constantly drawn upon to control the 'lower urges'. Whilst classicism tended to focus on 'the *act* of crime', conservatism tended to focus on the '*actor*' whose position in the social order is of key importance (Young, 1981: 275). Founded on 'sacrifice, discipline

and submission to authority', it is not synonymous with party-political Conservatism since the latter may vary to some extent from the former, in some instances adopting other political orientations (Young, 1981: 274–5). Behaviours which threaten order or endanger person or property, and (unlike classicism) offend morality, are defined by conservatives as criminal. Crime is caused by lack of self-control and lack of self-discipline in 'the pursuit of individual gratification' (Young, 1981: 277).

In the mid-1970s, two prominent criminologists, van den Haag and Wilson, developed these basic principles by highlighting six key themes of a conservative approach:

- 1 social inequalities are essential because 'disproportionality of reward' is the best way that capitalism can be maintained (van den Haag, 1975);
- 2 that is futile to seek reasons for crime causation in socio-economic factors since improvements in this regard in the 1950s resulted in an increase rather than a decrease in crime rates, thus criminality is typical of self-centred, extrovert and struggling lower class people (Wilson, 1975: 4 and 41–2);
- 3 harsh deterrent punishment is the most effective form of crime control (van den Haag, 1975);
- 4 classical utilitarianism (for example, Bentham and Beccaria) is the correct theoretical approach to crime prevention and that offenders will be deterred from committing offences if the benefits of criminal activity are reduced, the opportunity for the commission of offences is made more difficult, and the likelihood of crime detection and punishment are increased (Wilson, 1975: 175);
- 5 that prison is ineffective in trying to rehabilitate offenders, who, if not deterred by their own 'internal calculus of utilities' deserve to be imprisoned so that they are at least prevented from committing further offences whilst in prison (Wilson, 1975); and
- 6 criminal behaviour is voluntaristic and the decision to commit crime is a matter of individual choice or the product of unchangeable 'biological or social processes' (Wilson, 1975: 50).

Proponents of the conservative approach largely blamed what they perceived as declining moral standards and permissiveness in the 1960s for continuing increases in crime in the 1970s. The most significant developments in terms of how black criminality was to be analysed according to conservatism included:

- a 'predatory street crime' was 'far more serious' than other crimes such as fraud, antitrust violations, corporate corruption and human rights abuses;
- b crime rather than socio-economic factors was largely responsible for 'urban decline'; and was 'symbolic of the breakdown of community cohesiveness' since increases in crime in urban areas resulted in middle class 'community leaders', who were traditionally responsible for the maintenance of local 'standards of decency', fleeing to the suburbs;
- c crime was not the result of poverty, racial discrimination, or socio-economic disadvantage. Policies and programmes designed to ameliorate such deprivations had failed in the 1960s and 1970s. Relative economic post-war prosperity had not prevented continued increases in American crime rates (Wilson, 1975).

Wilson's (1975) reluctance to accept any link between socio-economic factors and crime exemplifies traditional conservatism's approach to crime control.

The shift to neo-conservatism (sometimes referred to as New right, Right realist, or Radical right criminology) is a more messy affair characterised by elements of individual rationality and general deterrence, the incorporation of some neo-positivist explanations grounded in notions of an 'underclass' and socio-biological determinants, and also by neo-liberalism's free market economics which emphasises freedom of choice and minimal state interference. According to Tame, the most relevant neo-conservative writers in relation to criminology are Jane Jacobs, Edward Banfield and James Q. Wilson, the latter being the most significant. Jacobs (1964) demonstrated the counter-productiveness of planning and regulation, while Banfield (1968) analysed difficulties caused by the "lower-class" value system', impoverishment caused by welfare, and the 'rational effects of incentives and disincentives to crime' (Tame, 1991: 140)

In his revision of *Thinking about Crime* in 1983, whilst still maintaining that 'deterrence works', Wilson contradicts his previous utilitarian stance by also assuming that criminality can be accounted for by poor parenting. 'Discordant homes', liberal child-rearing, single parenting, dependence on welfare, and ineffective methods of discipline – mainly viewed as a result of 1960s permissiveness – were believed to engender criminogenic traits. By 1985, Wilson (and Herrnstein) also added that biological factors

predisposed some individuals to criminality especially when these coexisted with a 'discordant' family background.

As such Wilson and Herrnstein attempted to combine features of biological determinism and learning theory. They stressed that a combination of particular physiological, biological and personality traits led to a predisposition to criminal behaviour. They concluded that being male, young, impulsive, aggressive, of mesomorphic body type, and/or having sluggish autonomic nervous systems, criminal parents, or a low IQ, distinguished criminals from non-criminals. Nevertheless, criminality was also determined by choice after weighing up risks and benefits of the offence, but significantly such choice was viewed as being dependent on the genetic power to develop a conscience. Wilson and Herrnstein's (1986) eclectic analysis of 'individual constitutional predisposition, and/or individual choice based on rational calculations of self-interest' theory typifies an individual explanation of criminality (Reiner, 1993: 3).

'Race' was noticeably absent from Wilson and Herrnstein's list of criminogenic factors, but they did address the issue by arguing that higher crime rates among African-Americans was undeniable 'even allowing for the existence of discrimination of the criminal justice system' (Wilson and Herrnstein, 1986: 461). Their stance on *black* criminality also adds a cultural factor: for black people crime is generated in the context of a 'ghetto poor' who are hostile towards authority (especially the police), lack adherence to the work ethic, lack law-abiding parental role models, and involved with prostitution and drugs as users and suppliers (Wilson and Herrnstein, 1986).

Although Reiner (1993: 2) argues that 'conservative criminology scarcely exists' in Britain, he notes how the views of Wilson and Herrnstein, found fertile ground among British Conservative politicians. He summarises these as:

- a black people are 'disproportionately criminal' and that this results in their being disproportionately suspected and convicted of offences;
- b racism in the criminal justice system is a myth;
- c black people are disproportionately represented among victims of crime is also a result of their 'greater criminality' since the bulk of crime is intra-racial rather than inter-racial.

By the mid-1980s, these visions had coalesced in the notion of a 'black underclass'.

An 'underclass'?

'Underclass' is the latest in a list of derogatory labels such as the 'great unwashed', 'casual poor', 'unworthy poor', 'social outcasts', 'lumpenproletariat' and 'dangerous class' used as a term for those sections of the poor deemed to be a threat to safety and order dating back to the early nineteenth century (see, for example, Mayhew, 1851–62; Pearson, 1975; Davis, 1989; see also Chapter 1). According to Inniss and Feagin writings on the 'Black underclass' first emerged in the early 1960s in the US, however, then the most common terms used were 'the poor', 'the lower class' and the 'culture of poverty' (Inniss and Feagin, 1996: 350).

In the 1970s and 1980s social scientists and commentators such as Murray, Loury, Lemann, Glazer and Moynihan were instrumental in shifting 'public discussion away from such issues as decent-paying jobs, capital flight, racism, and militarism and back onto the old 1960s' issues of crime, welfare, illegitimacy, ghetto pathologies, and the underclass' (Inniss and Feagin, 1996: 352). For example, Auletta argues that black, white and Hispanic 'permanently poor' constitute the 'underclass' and racism plays 'no significant part' in its formation (Auletta, 1982 as quoted in Inniss and Feagin, 1996: 353). However, lifestyles 'characterized by 'behavioural as well as income deficiencies' are specifically characteristic of the 'Black underclass' (Auletta, 1982: 28). Lemann traces the roots of 'the underclass culture in the ghettos' to the 'nascent underclass of the sharecropper

South' (Lemann, 1986: 35). By the mid-1980s, a '*culturally oriented* underclass theory' was prevalent in intellectual publications as well as the mass media (Inniss and Feagin, 1996: 354 emphasis added). One of its leading advocates, Charles Murray, argued that:

Drugs, crime, illegitimacy, homelessness, drop-out from the job market, drop-out from school, casual violence – all measures that were available to the social scientists showed large increases, focused in poor communities ... we began to call them the underclass.

(Murray, 1990: 3)

In a subsequent article, 'The British Underclass', Murray argued that what he had formerly described as amounting to the emergence of a 'nascent underclass' in Britain in 1989, had by 1999 both in 'behaviour and proportional size' grown to resemble the American underclass. In this article Murray sought to clarify what he meant by this term:

By underclass I do not mean people who are poor, but people at the margins of society. Unsocialised and often violent. The chronic criminal is part of the underclass, especially the violent chronic criminal. So are parents who give nothing back to the neighbourhood and whose children are the despair of the teachers who have to deal with them.

(*The Sunday Times*, 13 February 2000)

Murray's theory on the 'underclass' exemplifies the shift from individual to cultural explanations of criminality within neo-conservatism. He identified three key characteristics of the underclass which served as 'warning signals' in the USA: *illegitimacy, violent crime, and drop-out from the labour force*. He asserts that illegitimacy, 'sky-rocketing' in Britain among lower-class communities since 1979, causes specific social problems because of long-term welfare dependency of young lone mothers of illegitimate children (Murray, 1990: 4–8). Communities with a large proportion of unmarried mothers 'break down'. This is inter-related to the situation where large proportions of young men do not work and do not support families. He goes on to argue that 'young males are essentially barbarians' who are only 'civilised' when they are responsible for a wife and children (Murray, 1990: 22–3).

According to Murray policies in the USA and the UK have encouraged 'welfare state dependency' and young women deliberately have illegitimate children in order to secure access to public housing and state benefits. This position caused a dramatic increase in 'single-parent female-headed households' with resultant poor socialisation of children raised in such environments. The bulk of recorded increases in violent crime between 1980 and 1988 were attributable to the criminal activities of young men from the underclass (Murray, 1990: 5, 14, and 29). Although Murray states that black people were 'not causing Britain's illegitimacy problem' owing to their small proportion in the UK, he does draw attention to the apparently high illegitimacy rate among black people born in the Caribbean (Murray, 1990: 9) and in the USA (Murray, 1994: 3). The inference remains that groups with the highest rates of illegitimacy/single parenting are the most crime prone. Although the 'race' element in notions of the 'underclass' is stronger in the USA, it has been transposed into Britain *vis a vis* references to the proportion of black families with a single female head.

Subsequently, Murray reassessed the British underclass based on statistics showing illegitimate birth rates up to 1991. He reiterates that all three indicators of an underclass – high levels of violent crime, economic inactivity and illegitimacy – had increased, but focuses on illegitimacy. This decision to concentrate the discussion on 'recent changes in the English family' (Murray, 1994: 4) and the issue of illegitimacy was clearly in keeping with the neo-conservative preoccupation with the sanctity of the nuclear family and a return to 'decent' morals. Murray also notes the trend towards increases in divorce rates and short-lived cohabitation. Again he appears at pains to point out that the collapse of the family in England is not confined to black people, but in so doing uses black people as a negative yardstick:

The England in which the family has effectively collapsed does not consist just of blacks, or even the inner-city neighbourhoods of London, Manchester, and

Liverpool, but lower-working-class communities everywhere.

(Murray, 1994: 11)

The IQ debate

By the late 1960s, the debate as to whether intelligence was mainly attributable to heredity or environment had become largely persuaded in favour of the former following the work of Cyril Burt (see, for example, Burt, 1952). Jensen *et al.* (1969) argued that black people's genetic inferiority led to lower IQ than white people. Since this was heritable and fixed, low IQ could not be eliminated by environmental remedies. Similar arguments were put forward by Herrnstein in the early 1970s (see Yeboah, 1988: 238). During this period, Eysenck (1970, 1971), Burt's former student, also stressed that the inherited nature of black people's mental inferiority was the cause of their disadvantaged educational and socio-economic position.

Herrnstein and Murray (1994) argue that there is a link between low IQ and many socio-economic problems such as chronic unemployment, single motherhood, welfare dependency and crime. The disproportionate poverty experienced by black and Latino people was a result of their low intelligence – not racist discrimination. Since intelligence is genetically determined, attempts at creating greater social equality by means of affirmative action programmes was futile. Poor people should be discouraged from breeding by withdrawing the availability of welfare benefits and subsidised housing. However, these claims have not gone unchallenged. For example, Bourne and Ekstrand (1979) argued that no test is entirely 'culture-free', Kagan (1979) argued that scores on the Wechsler, and Dove IQ tests did not relate to 'basic mental capacity', and Kamin (1981) fundamentally disputed the concept of 'heritability' (see Yeboah, 1988: 230–257).

According to Smith, it is significant that 'many of Murray's and Herrnstein's ideas are now being echoed by middle of the road politicians' in racist speeches on crime,

immigration and welfare, which has helped to bring them 'into the mainstream' (Smith, 1995: 24–5). The recent focus on black criminality and individual biological/genetic explanations in the 1990s represents a resurgence of interest in eugenics:

Charles Murray in America and Richard Lynn in Britain are picking up where Eysenck left off, examining the intelligence, brain size and achievements of men against women and blacks against whites.

(*The Times*, 19 October 1995, as quoted in Richardson, 1994)

The credibility of these intelligence tests could be seriously questioned on the grounds of the possibility of racial/class/cultural bias in terms of content and interpretation, and the adverse influence of non 'same race' testers in terms of conduct.

Critical Criminology

In direct contrast to neo-conservatism, critical criminology is concerned more with processes of criminalization than with criminal behaviour since it seeks to explain why certain acts are criminalised by the state while other acts are not subjected to legal sanction (Beirne and Messerschmidt, 1991: 498). Its origins lie in part with an emergent Marxist criminology of the early twentieth century. Bonger, for example, applied a structural conflict theory of social order in relation to crime and argued that criminality and immorality are socially and historically variable. The criminal law was developed in order to protect the interests of the ruling classes under capitalism which was maintained by coercive exploitation as opposed to cooperative consensus. Capitalist society's encouragement of egoism and greed promotes criminality in the proletariat as well as the ruling class. The poverty of the former causes criminal behaviour so that basic needs can be satisfied. Similarly, where opportunities to achieve pleasure are perceived as being thwarted by a biased legal system and/or where it is perceived possible to gain an advantage through illegal means, crime also ensues (Bonger, 1916: 7–12).

Over half a century later, these themes were developed by Marxist-inspired conflict theorists such as Turk, Chambliss, Seidman and Quinney. They argued that:

- 1 the probability of criminalization of the lower classes corresponds with the level of power difference in favour of the ruling classes (Turk, 1969);
- 2 selective law enforcement of the lower classes in society was likely to result in their criminalization at different stages of the criminal justice process over and above the middle or upper-classes (Chambliss, 1969: 86);
- 3 where laws are enacted that are likely to result in their breach by all social classes, the lower the offender's social class, the greater the probability that sanctions will be imposed; where they are imposed, those in the lowest class are most likely to receive the severest type (Chambliss and Seidman, 1971: 475); and
- 4 judicial decisions are dependant on many *extra-legal* factors such as age, sex and 'race'; the handling of cases of minority groups represents the most obvious example of the biased exercise of judicial discretion, black people being 'convicted with lesser evidence and sentenced to more severe punishments' than their white counterparts (Quinney, 1970: 142).

Quinney's (1974) work represents a basic Marxist theory of the state which contends that the legal system is an 'instrument' of the state, but critical criminology moved beyond the notion of state law as simply repression. Hall and Gilroy favoured the approach of Marxist theorists such as Althusser, Pashukanis, Poulantzas and Gramsci. For example, Hall *et al.* (1978) adopt Gramsci's concept of hegemony being maintained through power exercised by coercion and consent. In order to secure consent, the law must be seen as working to some degree so that its credibility and legitimacy can be maintained. The role of the law was pivotal in maintaining consent and in securing control and hegemony.

The parameters of critical criminology

Ideologies of crime and punishment are a major focus of critical criminology: it is concerned with the investigation of 'the cluster of theories, policies, legislation, media treatments, roles and institutions that are concerned with crime, and with the control and punishment of crime'. Critical theory, discourse analysis, and standpoint research represent some of the most influential approaches within critical criminology. They share

a common interest in the research of those subjected to repression by 'existing social and power relations' (Hudson, 2000).

Rather than persisting with the traditional focus on *causation*, critical criminologists emphasised the primacy of analysing the contexts of social action and reaction (Sim *et al.*, 1987; see also Hudson, 1993a: 27). Critical criminologists drew from and expanded interactionism and labelling theory especially in the development of a structural explanation of criminality. Taylor, Walton and Young (1973), for example, was an influential work because it attempted to merge Marxist doctrine with aspects of interactionism and labelling theory to establish a 'fully social theory of deviance' and argued that social control situated in the state was inextricably linked to crime and deviance.

However, the concept of social control as expounded by Lemert and Becker, was rejected by critical criminologists because it was 'too imprecise', failed to be historically specific, and was not founded on any theory of the state (Hall *et al.*, 1978: 195). Critical criminology shifted the emphasis away from labelling theory's assertion that social control causes crime, to the proposition that state control of crime was of paramount importance in the understanding of crime and deviance. Furthermore, it rejects both a liberal-pluralist conception of the state which emphasises the doctrine of the separation of powers, and an orthodox Marxist perspective which emphasises the role of state power as repression. Critical criminologists perceive power as being unified through the state, its coercive legal powers being legitimated by *ideological constructs*, such as purported massive increases in urban crime (see, for example, Hall, 1980 below; see also Box, 1983).

Critical criminology mainly focuses on issues relating to the 'impact of ideologies and the practices they underpin on those on the down side of power relations' and is linked to campaigns 'on behalf of the powerless'. Therefore, critical criminology adopts perspectives which seek to address the position of minority ethnic groups, poor and

marginalized groups, and women (Hudson, 2000). Critical criminologists reject the suggestion, accepted by conservative/neo-conservative criminologists, that increasing crime rates, and especially increasing 'black crime' rates, has amounted to crisis proportions in urban areas.

For example, in Hall *et al.*'s (1978) seminal work on the 'mugging' moral panic in the 1970s, as Hudson has pointed out, it was argued that as part of the state's response to 'a crisis of legitimacy' concomitant with recession, dominant portrayals of apparent increases in crime rates were designed mainly to induce the notion that criminals should be blamed for 'urban decay' and that crime was 'the most urgent social problem' (Hudson, 1993a: 21; see also Chapter 1). Hall *et al.* trace the way in which 'mugging' grew to be most closely associated with black youth who became the 'primary folk devils' (Muncie, 1996a: 53; see also Chapter 1). Therefore, according to such proponents of critical criminology these purported increases in crime, especially crime committed by black people, did not amount to a 'crisis' but became socially constructed as such in order to divert attention away from the state's 'crisis' in the 1970s (see Chapter 1). Moreover, the redefinition of 'mugging' from what was formerly known as 'snatching' was used to justify:

not only a new category of crime, but also punitive sentencing and a generalized breakdown of law and order in society ... The sudden defining of the historically recurring event of street crime as a mugging created the impression of a crime wave and provided government with the justification to introduce repressive legislation which ultimately came to affect the quality of life of the vast majority.

(Muncie, 1996a: 53)

In Hall's account of the 'drift into a "Law and Order" society' in the 1970s, 'crime' was identified as playing a vital role not only in justifying the decrease of civil, welfare and labour rights, but also in legitimising increases in law enforcement agencies' powers and the intensification of the shift towards a more disciplinary society with the further

criminalization of protest groups and those perceived to be leading a deviant lifestyle (Hall, 1980; see Chapter 1). As Hudson has observed, in the 1980s, critical criminologists were mainly concerned with explanations of the 'criminalization and repression of groups who were perceived by those in power as posing a threat to social order' such as the proliferation of criminal proceedings and the paramilitarization of policing of protest who were perceived by those in power as posing a threat to social and political order'. For example, Box's (1983, 1987) '*power-threat*' hypothesis offers a useful insight in this area (Hudson, 2000; see also Hudson, 1993b: 86; and below).

In the 1990s, critical criminologists became increasingly concerned about the paramilitarization of the police (Jefferson, 1990; Jefferson, 1991) and, with the ending of the cold war, the apparent shift of focus from struggles overseas to the fight against crime and disorder at home. Companies traditionally involved in the manufacture of military equipment have transferred their output to technological devices such as electronic tagging and surveillance apparatus. The expansion of the privatization of prisons and security provides employment opportunities for those previously employed in the armed forces and in traditional industries supporting the military (Christie, 1993 as cited in Hudson, 2000).

Thus critical criminologists have argued that there is an economic demand for crime, similar to the long-established economic demand for intermittent wars (Hudson, 2000). In addition to profit-making opportunities arising from increases in the demand for more weaponry as a result of the paramilitarization of the police, no doubt this also extends to the demand for increases in protective and safety equipment such as helmets, shields and bullet-proof vests.

Critical criminologists in the 1990s also continued to focus on policing and black people (Cashmore and McLaughlin, 1991; Jefferson, 1991; Walker *et al.*, 1992; Keith, 1993a, 1993b; see Chapter 2). During this period Keith (1993a) applied Hall's (1980) arguments specifically to the position of black people (see Chapter 1), and, as Muncie *et*

al. have pointed out Keith argued that 'crime' is largely a 'racialized discourse', the 'crime problem' being highly influenced by representations of 'race' (Muncie *et al.*, 1996: 204).

Such interest was renewed and broadened by the Stephen Lawrence Inquiry (for example, Hall *et al.*, 1998; MacLaughlin and Murji, 1999; see Chapters 1 and 2). Therefore, in addition to an interest in police-black relations and wider issues of 'race' and criminal justice, as Hudson has pointed out, critical criminologists continue to analyse the politics of 'law and order', and the changing nature of the 'master patterns' of control (Cohen, 1985) in the late 1990s (for example, Garland, 1996 as cited in Hudson, 2000).

According to Muncie *et al.*, Scraton and Chadwick (1991) 'set the parameters for a critical criminology in the 1990s':

... they [Scraton and Chadwick] argue that the true complexity of processes of power, the marginalization of particular groups and criminalization can only be grasped by remaining alive to the impact of, and interplay between, the three determining contexts of production, reproduction and neo-colonialism. As such, a critical analysis of crime and criminal justice must be grounded in analyses of patriarchy and racism as well as class and economic production.

(Muncie *et al.*, 1996: 204–5)

Thus critical criminology represents a shift away from positivist and mainstream criminology towards establishing the ideological construction of crime within precise historical contexts and how the state is involved in this process. In pursuit of these aims, critical criminologists have adopted methodologies which rely more on a *qualitative and critical* approach rather than the quantitative and atheoretical approach of mainstream and administrative criminology.

As Jupp (1996: 16) has pointed out, the qualitative tradition is linked with ethnography, whereas:

The critical tradition seems less overtly empirical in the sense that there does not appear to be a fixed set of protocols to be followed in the collection of evidence and the reaching of conclusions ... a wide range of strategies has been

used to uncover and unearth those features which are seen as central to critical theorizing, such as the distribution and the exercise of power, the preponderance of inequalities in society and injustices in the operation of the criminal justice system (see, for example, Harvey, 1990).

(Jupp, 1996: 16)

Moreover, as Jupp has argued, *the critical tradition appears to utilize a variety of methodological approaches* including ‘the critical analysis of text and examination of discourses’ such as in Worrall’s (1990) study on the treatment of women offenders (Jupp, 1996: 16). In trying to understand the evident reversal in 1980s penal policy that aimed to limit custodial sentences to the most severe crimes, in the late 1990s critical criminologists adopted the methodology of ‘looking at pieces of legislation, speeches, and other ideological outputs, and decoding them within the analytic framework of state ideologies’ (for example, Bottoms, 1995; Sparks, 1996). Some work is also ‘reflexive’, scrutinizing how ‘critical criminological theory itself’ has contributed to the politics of ‘law and order’ (see for example Nelken, 1994; Simon, 1996 as cited in Hudson, 2000).

Hudson observes that proponents of critical criminology engage in critical reflection of a particular phenomenon by ‘a series of analytic levels’: the criminological, the connection of this with relevant wider social theory drawing on the use of critical theory, and the application of relevant theory to ‘explain’ the phenomenon under consideration. This was the method adopted in her recent research on sentencing patterns for young burglars (Hudson, 2000). Although critical criminologists have favoured a qualitative approach, quantitative analyses have not been entirely excluded from contributing to research. Tony Jefferson, a leading proponent of critical criminology and co-author of Hall *et al.*’s (1978) *Policing the Crisis* (see above), has included quantitative methods in research on policing (Walker *et al.*, 1992 see Chapter 2) and on the treatment of males from arrest to disposal (Jefferson and Walker, 1992 see Chapter 3).

Notions of state repression, political resistance, criminalization, and selective law

enforcement were the four key themes of a critical criminology that emerged in the 1970s. This development represented part of the 'radical' challenge to previous deviancy theory in that it advocated a shift away not only from conservative individualism but also from the 'liberal-pluralist' approach of mainstream criminology in favour of an approach which emphasised the need to pose 'definitional and structural questions' (Hall and Scraton, 1981: 460).

Critical criminologists are committed to demystifying state power and to expose the ways in which the powerless are affected by the criminal justice system. As Muncie has pointed out, the focus on constructing 'a *criminology from below* has involved working with pressure groups such as the prisoners' union' (Muncie, 1996a: 52; see also Sim *et al.*, 1987: 10–19), and publicizing examples of miscarriage of justice and state repression such as those arising from institutionalised racism and sexism in the criminal justice system (Muncie, 1996a: 52). Thus critical criminologists have acknowledged the importance of such pressure groups, and also 'grass-roots organizations' and various struggles and campaigns focusing on the treatment of black people in the criminal justice process (Sim *et al.*, 1987: 31; see also Gilroy, 1987a, 125–6; McLaughlin and Murji, 1999: 372–4). For example, as Sim *et al.* have pointed out:

Collectively these campaigns have challenged the power of the state, in its various forms, to dictate the direction of the lives of black and brown (*sic*) people in Britain.

(Sim *et al.*, 1987: 31)

Therefore, for critical criminologists the most pressing concern in contemporary society is not ostensible *increases in crime* but rather *increases in coercive state tendencies*. Their aim is to demonstrate how such tendencies constitute an essential part of the state's response to an economic crisis in advanced capitalism which necessitates the

repression and *criminalization* of all those deemed a threat or a dissident (Sim *et al.*, 1987).

Criminalization

According to Hall *et al.*, criminalization can be defined as ‘the attachment of the criminal label, to the activities of groups which the authorities deem it necessary to control’ that plays an important part in the legitimization of ‘judicial control’ (Hall *et al.*, 1978: 189). As Muncie has pointed out, this reflects a conflict-based definition of criminalization (Muncie, 1996a: 53; see also Turk, Chambliss, Seidman and Quinney above). For Keith (1993b: 243), the construction of black criminality is related to ‘racially circumscribed processes’ of criminalization:

a process that is tied to production relations as well as to consumption relations; empirically tied to the institutional racism of housing, education and social services as well as the major institutions of the Criminal Justice System such as the police, the courts, the prison service and the probation service.

(Keith, 1993b: 242–3)

In addition to drawing on aspects of labelling theory, critical criminologists’ ideas on criminalization have been influenced by work on ‘unproductive elements’ (Spitzer, 1975) and ‘surplus populations’ (Quinney, 1977) where it was argued that such sections of the population no longer deemed to have a useful economic function were targeted to be managed or controlled in advanced capitalism. Box has explained how these writers believed that it was imperative for the state to control such ‘undesirable’ groups, especially those considered a potential threat:

Despite these different images, each of these authors is referring to the same phenomenon – that group of people ‘unrequired’ by the productive process and who therefore become a ‘nuisance’ eligible for state intervention. If they are ‘social junk’, as Spitzer graphically puts it, such as the elderly, sick or mentally disturbed, they have to be *managed*; if they are ‘social dynamite’, such as the

under – and unemployed, or unemployable, they have to be *controlled*.

(Box, 1983: 207, 209)

Critical criminologists have developed analyses beyond the constraints of formal Marxism by incorporating arguments not only on class and capital, but also on gender and 'race'. Their arguments have made a significant contribution to the understanding of *black* criminality issues by highlighting the impact and ideological implications of criminalization usually targeted at powerless marginalised groups, and especially black people. Scraton and Chadwick, for example, argue that criminalization is a 'powerful process' able to mobilise 'popular approval and legitimacy' which supports powerful interests within the state:

Criminalization, the application of the criminal label to an identifiable social category, is dependent on *how* certain acts are labelled and on *who* has the power to label, and is directly limited to the political economy of marginalization ... 'criminalization' is a process which has been employed to underpin the repressive or control functions of the state.

(Scraton and Chadwick, 1991: 172–3)

Arguably, the disproportionate criminalization of black people is pivotal in the operation of institutionalised racism in the criminal justice system (see Chapter 11) and has an ideological function of wider significance for the powerful than just control in the national sphere. The impact of institutionalised racism extends beyond Britain and is a vital aspect of securing racist ideology and the economic oppression of black people elsewhere. This applies not only to the past in relation to slavery and colonialism (see, for example, Solomos and Back, 1996: 37–49), but also to contemporary times:

the continuation of capitalism in a society like Britain or the United States is fundamentally dependent on exploiting the peoples and resources of the Third World. Thus it can be forcefully hypothesised that the maintenance of an internal racist ethos is necessary in order to rationalise whatever draconian political and military interests in the 'coloured' parts of the world.

(Oxaal, 1985: 145)

The distinction between the criminalization process as between white and black people is that the former are criminalised as a result of belonging to a disadvantaged subgroup whereas the latter are criminalised *as a whole* (Hudson, 1993a: 21). Two 'transformative' developments in the criminalization of black people highlighted by critical criminologists are, firstly, 'the shift in police attitudes towards black communities' from perceiving them as having low crime rates to 'identifying whole areas as black "criminal subcultures"' as portrayed in Brown (1977); and, secondly, the 'racialisation' of disorder in urban areas in England in 1981, and also later in the 1980s (Solomos and Rackett, 1991 as quoted in Hudson, 1993a: 22-3).

However, Jefferson argues that rather than criminalization affecting the black community in its entirety, it is a 'generationally-specific' phenomenon which involves the 'younger, second generation seen to be "rising up angry"' to a greater extent than the more compliant first generation of black immigrants. 'Youthfulness' is a more reliable predictor of involvement with the criminal justice system than ethnicity. Sex, class, and other socio-economic factors are also important in relation to criminalization. Black youth, disproportionately discriminated against in society generally, represent the 'quintessential modern delinquent' because they are '*young and male and "rough" working class and black*'; although 'to be young, male, and "rough" working class is to be inordinately at risk of criminalization' even without the ethnic dimension. Nevertheless, black people in society, particularly young black males, are over-represented among those criminalised. The focus on the 'young, "rough" working class male' should not be lost in the debate on 'who is "cast out" as the criminal Other' (Jefferson, 1993: 35, 39; see Chapter 1).

Solomos points to the importance of the social construction of excessive involvement of black youth in street crime in the development of control strategies aimed at 'keeping young blacks off the streets', and also 'keeping the police in control of

particular areas’ identified as having a high crime rate (Solomos, 1993: 134–5 emphasis added). As Hudson has pointed out, in Benyon and Solomos (1987) on the underlying reasons for urban unrest, Solomos ‘shares the radical realist emphasis on relative deprivation, but elsewhere shares critical criminology’s preoccupation with processes of criminalisation, and the constitution of black people as a problem for (white) society’ (Hudson, 1993a: 27).

In addition to arguments on the link between age, ‘race’ and criminalization, *geographical area* has also been identified as having some bearing on how some sections of the population become criminalised. The idea that specific inner-city areas are disproportionately crime-ridden and ‘dangerous’, similar to Victorian notions of ‘dangerous places’ (see Pearson, 1975), was further developed by Keith in relation to the concept of stereotype of place:

Confrontations between police and local [black] communities do not occur randomly in some places and not others. Instead, such places have been produced and defined by their histories which in turn structure the actions of people who live and work there ... Labelling and criminalization by area assume the nature of a self-fulfilling prophesy, a cumulative spiral of decline that callously victimises the poorer and powerless groups in society.

(Keith, 1993b: v, 199)

Keith argues that ‘standard labelling theory’ relates to the isolation and victimization of a specific ‘demographic fraction of society’, whereas the concept of stereotype of place is based on criminality constructed by drawing on ‘the glossary of racial difference’ which is ‘applied to define the varying subject positions of black communities at particular times and places’ (Keith, 1993b: 240).

According to Keith (1993b), the emergence of a black criminal ‘other’ in England has been geographically-specific since the police-black conflict which is systematically

reproduced and amplified is linked to specific geographical areas with large populations from minority ethnic groups (for example, the 'Front Lines' in Brixton, Hackney and Notting Hill, in London, as well as various estates). The police's negative and criminalistic image of black people in such areas has developed over a period of time.

The 'Myth of Black Criminality' thesis

The overall impact of 'race' being constructed as a criminal 'other' for Gilroy was that it results in black criminality attaining 'mythical' proportions. Other writers have argued that black people – especially black youth – have been clearly identified as an 'enemy within'. Gilroy developed the notion of 'the Myth of Black Criminality' not with the intention of suggesting that black people did not engage in criminal activities at all, but rather to draw attention to the portrayal of black criminality which he argued 'achieved a mythic status in the lexicon of contemporary politics'. He criticises writers on the left *and* the right for adopting a predominantly cultural explanation of black criminality: that it was 'un-British' and 'alien', and that the commission of certain crimes represents an expression of the ethnicity of the perpetrators. Intense historical investigation would be necessary to ascertain the possibility of any direct relationship between 'ethnicity, black culture and crime' which is an under-theorized and complex issue (Gilroy, 1987b: 117–8).

Davis previously examined the 'mythical' nature of black criminality within a specific historical perspective in relation to the use of the 'myth of the Black rapist'. She argues that 'the fraudulent rape charge stands out as one of the most formidable artifices invented by racism' in US history (Davis, 1981: 173). The 'myth of the Black rapist' was deliberately invoked for political purposes having first been 'conjured up' in connection with the proliferation of lynching of black men after the American Civil War (Davis, 1981: 184–5). According to Davis, 'the reality behind this terribly powerful myth' was that the majority of lynching victims were not actually accused of rape: one study on mob victims

in 1931 showed that only 17 per cent were charged with rape, 38 per cent with murder, and the remainder with theft, assault or a variety of trivial charges (Davis, 1981: 188–9).

Other writers have highlighted the political and ideological significance of the concept of the ‘enemy within’, developed as part of the official response to the deepening crisis, which appears to reflect strong links between cultural and structural explanations of criminality. For example, Box observes that the increasing shift towards a ‘law and order stance’ led to the creation of an ‘enemy within’, which, he suggests is:

not a term to be dismissed lightly; it genuinely reflects the government’s view that the country has indeed been invaded by groups of people who no longer have any respect for the law, who are no longer willing to be acquiescent, and whose beliefs are ‘alien’ to the traditional values that made Britain and America ‘Great’. This enemy has to be dealt with ... ‘Law and Order’ is simply the ideological shield behind which American and British governments have prepared for the worse contingencies as the recession deepens.

(Box, 1987: 132)

He argues that although there was official recognition of the potentially explosive consequences of poor living standards and high unemployment, instead of implementing measures towards high employment, the government sought to expand the ‘control network’ especially in relation to what was perceived as ‘the most threatening part of the “surplus population”’ comprising black people and other marginalised groups (Box, 1987: 131–2).

Similarly, Solomos examined the concept of the emergence of an ‘Alien Wedge’ and ‘enemy within’ and argued that ‘there seems little doubt that the 1985 riots helped to strengthen the imagery of blacks, and young blacks in particular, as an “enemy within the heart of British society”: popular images of race focusing on ‘the idea of a threatening presence – which is not “British”’ (Solomos, 1988: 204, 230). Again this reflects the potency of racially defined criminal ‘others’ which can be used to exacerbate feelings of patriotism among the indigenous population against a purported internal ‘enemy’.

Malik has argued that in the nineteenth century, 'many of the themes in the contemporary discourse on immigration' had been 'previously applied to European immigrants: their propensity for violence and criminal activity, their unhygienic habits, their sexual perversions, their inability to assimilate' (Malik, 1996: 35). Cashmore and McLaughlin have also pointed out that in Britain 'the idea of linking immigrants with crime, unruliness and disorder is by no means a novel one', Irish and Jewish people having been associated with excessive criminal activity prior to such claims about black immigrants. Nevertheless, they agree with Solomos and other writers who have argued that black youth in particular in recent years have been singled out and 'officially defined as a social problem and given special treatment'. The response in terms of policing policy and practice has been to legitimise control techniques in the ongoing 'crisis' (Cashmore and McLaughlin, 1991: 10; see also Gilroy and Sim, 1985). Black people are not 'the only group to be stigmatised as "the enemy within"' since various other 'sub-groups of the disadvantaged' such as New Age travellers and squatters have also fulfilled this role (Hudson, 1993a: 21–2). Similar arguments could also apply to union activists, anarchists, and the IRA.

In spite of other groups being criminalised and at times being singled out as 'enemies within', the identification of a criminalistic racial 'other', remains an *easily identifiable* scapegoat for society's ills in relation to which popular consent for stringent crime control techniques is facilitated. Those identified as scapegoats, criminal 'others', folk devils, 'enemies within', and/or members of marginalised groups, and especially black people within these categories, all appear to be preferred targets of the criminalization process. A major concern of critical criminology has been not only to investigate the plight of the *criminalised*, but also to raise questions about those who have the power to create and apply these categories – who has the power to *criminalise* – and the ideological implications involved (see Chapter 11).

Left Realism

Left realism partly evolved as a reaction against critical criminology which was criticised for 'romanticising the deviant', for rejecting the possibility of progressive reforms (see, for example, Young, 1986), and for its idealist tendencies:

on the one hand, left realism takes an oppositional political and theoretical stance from that adopted by the realists on the right; while on the other it consciously avoids collapsing into the romanticism and idealism which has been evident in much of the radical and critical criminological literature of the 1970s.

(Young and Matthews, 1992: 6)

Left realism combines two key theoretical positions on 'race' and crime: individual/cultural explanations which stress the higher propensity to criminality on the part of black people, *and* system-based explanations which focus on racist practices of the court and criminal justice practitioners. Described by two prominent proponents, Young and Matthews, as stemming from 'current debates in democratic socialism', left realism emphasises the prioritization of 'social justice' rather than order (Young and Matthews, 1992: 6).

Left realists' emphasis on 'taking crime seriously' stressed the need to view crime as a real problem for working class people, particularly women and black communities, and to appreciate that the fear of crime was not irrational but related to the daily experience of working class people. Previous criminological theory is critiqued for being partial, with for example, critical criminologists being criticised on the grounds that they view criminalization 'as a wholly state-generated process' (Young and Matthews, 1992: 17, 19; see also Matthews and Young, 1992: 2).

Contrary to critical criminologists, left realists did not accept that high crime rates were largely a media construction or incorrectly the focus of moral panics, rather crime was a result of marginalisation and 'relative deprivation' which:

involves the subjective assessment by the actor of injustice. And this sense of injustice can have many outcomes (political and religious, for example, as well as criminal), depending on the fashion in which individuals forge their response within the national and cultural possibilities which present themselves

... Not all poor people commit crime, as conservatives critics constantly and obviously point out, but crime does not, as they would have it, involve a moral choice in a vacuum.

(Matthews and Young, 1992: 8)

For Lea and Young the concept of relative deprivation is largely concerned with the way in which the individual perceives injustice, criminal behaviour being the outcome of economically and politically marginalised groups' feelings of discontent (Lea and Young, 1984: 81, 88, 95). They agree with Cloward and Ohlin's arguments that the promotion of the notion of 'Equality of Opportunity' paradoxically paved the way for discrimination on racial, religious or class grounds since in reality 'rewards' are limited, and the informal use of racial, religious and class criteria are used to exclude 'surplus candidates' (see Cloward and Ohlin, 1960: 118–20).

Left realists argue that criminal sub-cultures emanate from marginalisation when real opportunities do not match expectations. For example, their notion of 'relative deprivation' was used to explain increases in street crime and public order offences among young inner city black males, considered to be that part of the working class which was deemed the most 'relatively deprived'. Lea and Young (1984) argue that it was no surprise that a large proportion of black youth were involved with street crime since such a large proportion were unemployed and disaffected. Although Lea acknowledges the problem may be exacerbated by racially-oppressive policing, this was manifested as a response to high rates of street crime in black communities rather than as a result of deliberate 'repression' (Lea, 1986: 158; see also Hudson, 1993a: 14). To this extent left realism shares some of the same concerns and agenda as neo-conservative criminology.

Theoretical perspectives reassessed

This chapter has examined the contribution of neo-conservatism, critical criminology, and left realism to criminological theorising on issues related to black criminality, and some of the unresolved contradictions between these three approaches. However, at the outset it was noted a large proportion of research on 'race' and criminal justice has stemmed from administrative criminology which focuses on policy and practice (see Chapters 2 and 3). As Young has pointed out, it is essentially concerned with 'technology and control' (Young, 1986: 12).

Thus administrative criminology can be criticised for failing to address theoretical considerations. According to one leading legal theorist it has achieved 'a high level of technical competence and generous coverage' of the majority of the stages in criminal justice decision-making, but this has not been accompanied by 'similar advances in theoretical frameworks which can be applied specifically to the problems of the criminal process' (Ashworth, 1988: 247 as quoted in Hudson, 1993a: 12). Rather than viewing the criminal justice and penal system as a whole, administrative criminology is pre-occupied with the function of individual criminal justice agencies and processes, and with the operation of discretion and direct discrimination, while the impact of indirect discrimination is neglected (Hudson, 1993a: 11–12). Moreover, as Hudson has observed:

It has produced statistical enquiries which, even as they become more methodologically sophisticated, continue to produce findings which contradict each other, and contradict lived experience. Administrative criminology has contributed much to the better management of the various agencies and processes, but it has contributed little to racial justice or to criminological understanding.

(Hudson, 1993a: 12)

Unlike administrative criminology, neo-conservatism, critical criminology, and left realism cannot be criticised for being atheoretical, but their contribution to the understanding of

issues related to 'race' and criminal justice remains contested.

Neo-conservative theory in this field, characterized by individual and cultural explanations of criminality, is at best partial or at worst racist. Its racist connotations are exemplified by its stance on 'race' and intelligence, and also on the 'underclass'. In relation to the former, for example, Wilson and Herrnstein (1986) unquestioningly accepted that the average black IQ score was lower than the average white score and proposed that there was a link between criminality and low IQ (see also Herrnstein and Murray, 1994, above). Since low IQ was viewed as increasing the propensity for criminal behaviour, black people were deemed to be more likely to engage in criminal activity than white people.

Therefore, it is no surprise that Brake and Hale, referring to a comment made by Wilson blaming increases in crime in mid-1970s Britain on 'the presence of West Indians', point out that Wilson, even in his early writings, has taken 'a distinctly racist stance'. They observe that neo-conservatives such as Wilson have strived to 'make racism respectable by cloaking it in apparent objectivity' (Brake and Hale, 1992: 26). From the incisive references in Murray (1994) to the extreme position of black people in the USA *vis a vis* illegitimacy and high membership of the underclass, it could be inferred that, similarly, black people in the UK are key players in the 'deepening crisis' caused by what he claims to be the establishment of a large and expanding underclass. This is reminiscent of the 'racism cloaked in objectivity stance' observed in the case of other neo-conservatives such as J.Q. Wilson (see above).

Murray's (1990) arguments have been aptly criticised for being 'fundamentally flawed in numerous aspects', for example, a lack of appreciation of the nature of British society; an overriding tendency to automatically apply arguments concerning the position in the US to the UK; a lack of understanding of social and economic statistics; and the gross use of caricature and stereotyping. Murray also argues that there is a causal

relationship between crime, illegitimacy and unemployment, since these three factors indicate the existence of an underclass. This appears unfounded since it mistakenly asserts that an upward trend in relation to these factors 'proves' this argument (see David, 1990: 53–6). Moreover, as Alcock aptly points out, his arguments were based on the analysis of statistics spanning 450 years (up to 1987), which fail to convincingly compare 'like with like' (Alcock, 1990: 44).

The linking of biological/genetic factors to individual/cultural explanations of black criminality in the 'black underclass', and arguments suggesting that attempts to introduce racial equality programmes are futile because of alleged inherent biological/mental deficiencies of black people, reveal the tendency in neo-conservative discourse to downplay the influence of structural differences in society, psychological pressures and the impact of racism. Historically one aspect of the impact of racism has been that black people are perceived as subservient. Black people have always been relegated as being *under*-something, for example, *under*-civilised, *under*-developed, *under*-privileged, *under*-educated, and *under*-controlled, or of *sub*-intelligence or even as *sub*-human (see Blackman, 1952 in chapter headnote). Notwithstanding the plight of other marginalised groups in society, black people, and especially black youth, have so often been singled out as a particular social 'menace', as exemplified by Judge Gwyn Morris' reference to black youth as a 'frightening menace to society' in 1975 (see Solomos, 1993: 126), that it is little surprise that contemporary neo-conservative thought conveniently relegates a large proportion of black people to an *under*-class, prone to crime – especially violent crime – and low levels of morality.

However, 'underclass' theory, largely raised in the UK by the writing of Murray (1990, 1994, and in *The Sunday Times*, 13 February 2000 above) remains contested, and can be aptly criticized for its racist overtones and neglect of structural factors. As Inniss and Feagin have observed with reference to the development of the notion of the

'underclass' in the US, this concept is 'highly ideological and political'. Furthermore, 'it represents a casting about for a way of defining the problems of the poor, and particularly the Black poor, without substantial reference to the actions of US investors and capital flight (Inniss and Feagin, 1996: 350). Thus neo-conservatism's theorising on the 'underclass' exemplifies its preoccupation with subcultures and poverty and its neglect of structural considerations.

Various black writers in the US have challenged this theoretical stance, notwithstanding their adoption of the term 'underclass' and acceptance of its associated 'language of pathology' (Inniss and Feagin, 1996: 355). For example, William J. Wilson's development of the concepts of 'social isolation' and 'concentration effects' refute 'the neo-conservative notion that the causes of current Black problems lie in self-perpetuating cultural traits' (Wilson, 1987 as cited in Inniss and Feagin, 1996: 355–6). For Pinkney the 'black underclass' has no alternative but to try to survive in 'poverty' and 'social decay' often being 'forced' to resort to crime in order to do so (Pinkney, 1984: 117). He goes on to stress the impact of structural conditions on the plight of African-Americans (Pinkney, 1984: as cited in Inniss and Feagin, 1996: 356).

Similarly Glasgow's book, *The Black Underclass*, focuses on structural considerations and examines institutional racism in employment and in the education system (Glasgow, 1981 as cited in Inniss and Feagin, 1996: 356–7). He argues that programmes such as affirmative action have not improved the quality of life for poor people in the inner cities because they only aspired to correct 'superficial inequities without addressing the ingrained societal factors that maintain such inequities' (Glasgow, 1981 as quoted in Inniss and Feagin, 1996: 357). In a subsequent article, Glasgow also argues that 'the concept of the Black underclass has become widespread and generally has negative connotations' (Glasgow, 1987 as quoted in Inniss and Feagin, 1996: 357). Moreover, Glasgow questions three of the main assumptions underpinning 'underclass'

theory:

The implication that there is a value deficiency in the Black community which created the underclass; the notion that the underclass problem is mainly a female/feminization problem rather than a racial one; and the notion that it was anti-poverty programs that created the underclass.

(Glasgow, 1987 as quoted in Inniss and Feagin, 1996: 357)

Thus neo-conservative theorising on the 'underclass' epitomises its neglect of structural aspects in favour of a reliance on cultural and moral considerations underpinned by racist assumptions. Furthermore, neo-conservatism – given its focus on crimes of the powerless – can be criticised for neglecting the question of crimes of the powerful in contrast to critical criminology which has identified this as a key area of inquiry.

However, in spite of critical criminologists' contribution to the understanding of the nature, extent and ideological significance of white collar, corporate and state crime in advanced capitalism (for example, Box, 1983; 1987; Cohen, 1993), arguably, more attention could be drawn to the effects of environmental harms caused by business and state interests (see, for example, Fitzpatrick, 1998). Such ecological damage may be harmful for *all*, but those at the lower end of the social, political and economic hierarchy – including marginalized and minority ethnic groups – may be at more immediate risk owing to their location and limited resources than those at the who are less disadvantaged. Given critical theory's commitment to what Hudson (2000) has described as an 'explicit commitment to values of social justice and human rights', critical criminologists could usefully intensify interests in issues concerning the link between crimes of the powerful and environmental harms.

A strict Marxist 'instrumentalist' approach can be criticised for failing to account for laws which purported to control the ruling class or protect working class interests. Critical criminology's attempts at synthesising aspects of interactionism, labelling and Marxism

may contain too many contradictions given the latter's emphasis on economic considerations. Thus critical criminology's structural explanations of crime, like Marxism, have been critiqued as economic reductionist. Furthermore, from the standpoint of interactionism critical criminology appeared more as a political statement than an adequate sociology of deviance (see, for example, Rock, 1979).

Critical criminology's structural approach has also been denounced because it proposes little hope of change through reform (see, for example, Reiner, 1993: 16). For example, Hall *et al.* (1978) has been criticised on the grounds that it does not provide for any viable alternative strategies for crime control policy and practice. Carlen argues that 'the authors do not address questions concerning the possibilities (or not) for radical intervention into judicial and penal politics' (Carlen, 1983: 13). However, as it has been pointed out, 'the critical sociological approach to law and punishment is that of decoding ideologies, rather than searching for "real" remedies' (Hudson, 1993a: 26).

Moreover, it can be deduced that critical criminology's essentially structuralist stance regards reforms as merely 'tinkering with the system' rather than bringing about any effective changes (see Williams, unpublished, 1988, 79–80). Given the nature and exigencies of capitalism and the centrality of racism and ideological constructions of 'race' and crime within it (see Chapters 1 and 11), arguably this stance, which tends to point to the need for fundamental changes in society in order to bring about any *real* change in the criminal justice system, appears justified. Indeed, one of the strengths of critical criminology is that it has brought these issues to the forefront in its analyses. Furthermore, two of its main proponents, Hall and Gilroy (see above), are black rather than white academics. This may have given them greater insight into the manifestations of racism and assisted in their avoiding some of the pitfalls encountered by left realism. At least it raises the question as to whether the 'race' and crime debate is also racialised through the 'race' of its protagonists.

Hall *et al.*'s (1978) analysis of the mugging panic, particularly on the role of the media in generating 'crime waves' and the ideological implications of 'black crime', has been criticised – especially by left realists – on the grounds that it suggests a conspiracy between the media and the establishment; however, the authors have specifically denied any intention of putting forward 'a conspiratorial interpretation' (see, for example, Hall *et al.*, 1978: 219). Although from the standpoint of interactionism Downes and Rock (1982: 222) acknowledge that the 'reality' of the mugging panic is convincingly portrayed by Hall *et al.* (1978), this analysis is criticized on the grounds that:

- 1 it fails to establish that 'the official reaction sought to promulgate such a panic for larger ideological and political ends' and tends to "“over-predict” social control”;
- 2 there is a 'central inconsistency' in the authors' arguments which exonerate young black males from unduly contributing to increases in crime while at the same time this group is 'identified as a “super-exploited, sub-proletariat” whose increasing contribution is defined as “inevitable”: the official reaction to the mugging panic can, therefore, only be accused of being 'premature' rather than condemned as relying on a 'faulty analysis of the situation';
- 3 the authors attack 'the media and the judiciary' for frequently comparing the situation in Britain with that in America 'as a prefiguration of the inner-city future' but at the same time they make similar comparisons themselves;
- 4 the commitment 'to a particular version of class struggle' adopted by the authors 'over-determines' their analysis.

Furthermore, Hall *et al.*'s (1978) central argument, that in the 1970s 'the censure of the black mugger was the prime articulator of the hegemonic crisis' which was diverted onto the black communities, has been strongly disputed by Sumner and Sandberg. While they acknowledge that the harassment of black people by the police was certainly a feature of policing the crisis in the early 1970s, they disagree with Hall *et al.*'s view that 'policing the blacks became synonymous with policing the crisis' since *a whole range* of 'dissident minorities' (for example, militant trade unionists, radical students, Northern Ireland Catholics, squatters, the women's movement, the extreme left, Welsh and Scottish liberationists, hippies, drop-outs, liberal literati, delinquent adolescents, *and* black youth)

were 'censured, harassed and penalised'. They also criticised Hall *et al.* for over-emphasising 'the moves made by the state' in this period (Sumner and Sandberg, 1990: 163–4, 168, 172–3, 175). In their refusal to acknowledge the centrality of racism in this 'crisis', Sumner and Sandberg appear to downplay the full significance and long-lasting impact of the 'mugging' moral panic in the 1970s, given the extent of the implications for the policing of black people, especially young black people, and the enduring influence of the 'black mugger' stereotype (see Chapters 1 and 9).

The nature, extent and significance of the criminalization of young black people in explanations of black criminality have been usefully highlighted by critical criminologists, nevertheless, out of their identification of the 'pimp', 'mugger', 'Black Power activist', 'rioter', 'Yardie', and 'knifeman' as key stereotypes of black criminality, the 'mugger' is possibly the only one that conjures up the image of an exclusively *black youth* perpetrator. It is notable that difficulties in defining black youth persist. Can 'black youth' simply be defined in terms of age, or do other considerations apply such as style of dress, demeanour, manner of speech, and body language or even physical location – such as being situated at what may be perceived to be a local teenage hang-out? Moreover, Pitts, referring to Rutherford's (1986) arguments, has suggested that young black *and* white people on the socio-economic margins of society 'are, quite, literally prevented from growing up' and from 'growing out of crime'. Nevertheless, he was at pains to point out the significance of such obstacles for black people, for example, some still remained members of black 'posses' even when over the age of 30 (Pitts, 1993: 114–15).

Although official statistics reveal that young black males are over-represented in custodial institutions, it is also the case that *adult* black males are over-represented in even higher proportions (see Introduction). Moreover, findings in the most comprehensive study on 'race' and sentencing to date in England, Hood's (1992) study on Crown Courts, suggest that as between black and white defendants under 21 years there was no difference

in the probability of being remanded in custody or in average sentence length (see Chapter 3). Critical criminologists have drawn attention to the particularly vulnerable position of black youth in relation to the criminalization process and the 'knock-on' effect of early 'up-tariffing' of sentences on black defendants. However, further extensive analyses on black people and the criminal justice process would be useful to help unravel the complexities of criminalization and its ideological implications. There is a need to address more fully explanations why black people are so over-represented in prison when compared to their proportion in the general population (see Introduction). This is most marked in the case of black women but so far critical criminologists have neglected this question. Further exploration of the complex notion of 'masculinities and crimes' (Campbell, 1993; Messerschmidt, 1993; Connell, 1995; Walklate, 1995; Jefferson, 1997a) could usefully help to develop the 'race' and criminal justice debate in the case of black males.

According to Jefferson, in the UK 'the race and crime debate' has been 'bogged down' with the issue of how far black over-representation in official crime statistics can be attributed to discriminatory practices, whereas in the USA the relevance of the debate about 'subordinate or marginalized masculinities in crisis' was recognized earlier (Jefferson, 1997a: 551). However, as Hudson has argued, there is a need for careful consideration about possible inherent dangers of such analyses, especially during a period when:

the politics of law and order is producing a vast increase in the numbers of people incarcerated, for longer periods, in more austere conditions, criminologies which link crime to various 'subordinated masculinities', are likely to be rhetorically drawn upon to legitimate the jailing of more men, 'particularly men of color' (Chesney-Lind and Bloom, 1997) ... the most progressive and plausible theories are being developed in a social context which is all too likely to use them in vulgarized, piecemeal ways as part of a politicized construction of the criminal as 'alien other'.

(Hudson, 2000)

In Jefferson's report on the impact of 'noticing crime's "maleness"', in which it was acknowledged that discussion on 'criminalization/criminal justice matters' was specifically excluded (Jefferson, 1997a: 535), the author stressed that 'the complex fluidity of gender formation' needs to be taken into account in analyses of masculinity, and warned that 'if masculinity is used over-exclusively as an explanatory concept, the role of other significant factors may be obscured' (Jefferson, 1997a: 548). This report includes a survey of 'thinking about young "underclass" men with "no future", ethnicity and crime'. It traces the development of the notion of 'a connection between a life with "no future" and crime' from the mid-1950s American writings focusing on juvenile delinquency and the 'problem of "manliness"' (Goodman, 1956) and 'status frustration' (Cohen, 1955), to the analyses by British criminologists in the 1970s (for example, Hall and Jefferson, 1976) focusing on youth subcultures and 'class'.

Resurfacing again in the 1990s, the youth/gender debate was led by feminist writers focusing on the aggressive response of young socially and economically marginalized 'underclass' males (Campbell, 1991; Jackson, 1992a, 1992b; Jefferson, 1992), 'subordinate masculinity in crisis' (Campbell, 1993), and the 'yob' (Coward, 1994). From within criminology, a study on young male offenders reflected on the way in which males 'structurally excluded' from the mainstream seek to attain masculinity via the adoption of an excessive 'street' lifestyle (Collison, 1996 as cited in Jefferson, 1997a: 550). These writings – whether academic or journalistic – concern certain subordinated or marginalized masculinities and the 'effects of the global restructuring of the economy' at the 'power and masculinities' level of analysis. Jefferson argues that 'an analytic interest in particular cases' is needed in order to explore the 'psychic' as well as the social dimension of such groups such as in Mac an Ghail (1988, 1994a, 1994b); case studies and life histories could be useful similar to that employed in Wolfenstein's (1989) study on Malcolm X and his own work on the world champion boxer, Mike Tyson (Jefferson,

1996a, 1996b, 1997b). However, he suggests that such an approach should be undertaken in relation to 'ordinary' crime such as in Shaw's (1930) classic life history, *The Jack Roller*, rather than just that of famous public figures (Jefferson, 1997a: 551–2).

Nevertheless, Jefferson acknowledges two possible doubts about his (1997a) arguments:

One is the extent to which a psycho-analytic dimension adds a *necessary* explanatory level. The second is the degree to which the question of masculinity aids our understanding.

(Jefferson, 1997a: 553)

Moreover, dominant portrayals of 'alien' and criminal 'others' may to some extent be *reinforced* by notions of subordinated/marginalized masculinities, as Hudson (2000) has intimated above. Thus the value of the contribution of such an approach remains contested.

On the question of notions of criminal 'others', folk devils, and 'enemies within', undoubtedly critical criminologists have provided an invaluable insight into the ways in which the construction of such phenomena – especially those involving a 'race' dimension – serve to distract attention away from social problems and help to legitimize increases in state control (see Chapter 1). Nevertheless, the question remains as to whether such theorising extends far enough to 'explain' the practical consequences and ideological implications of black criminality and criminalization in the 1990s and at the turn of the millennium (see Chapter 11).

In spite of left realists' professions of analysing the problem of crime control from a multi-faceted perspective, they have been criticised for inadequately theorising on 'race' issues similar to much previous criminological theory largely dominated by contributions from white middle-class academics. Gordon aptly criticises the left realist concept of 'relative deprivation' in relation to black people born in Britain on the grounds that it fails

to take into account the extent of the latter's 'political marginalisation', or to recognise the impact of police racism. Left realist analysis can also be criticised for ending up with the position whereby black people are seen as the problem rather than racism (Gordon, 1983: 142).

A key difference between the stance of left realists and critical criminologists can be deduced from the titles of protagonists' work, as Hudson has pointed out:

What is to be done about law and order? [Lea and Young, 1984] assumes that there is a problem which needs to have something done about it, while *The Myth of Black Criminality* [Gilroy, 1987b] makes it clear that there is no distinct or disproportionate problem of black crime.

(Hudson, 1993a: 26)

One of the first critiques of Lea and Young's (1984) book disagreed with the contention implied by left realists that black people's disadvantaged economic and political position leads to criminality (Ginsberg, 1985: 128). Furthermore, Ginsberg criticises the book for being blatantly racist. By focusing attention on 'street crime', he suggests that the authors condone dominant perceptions of 'black crime':

Frankly the stereotype of 'the black mugger' in Brixton haunts the whole text. Lea and Young seem to go along with the establishment view that there was an explosion of 'street crime' by black youth in the inner cities in the 1970s, despite a critical discussion of the nature of criminal statistics in an early chapter. The fact that this is the central concern of the book is appallingly racist.

(Ginsberg, 1985: 127)

Pitts observes that the much-debated arguments on black criminality in Lea and Young (1984) challenged the credibility of the suggestion that sociologists/criminologists could simply choose to side with the powerless. Owing to their position on black criminality, left realists such as Lea and Young *had* basically changed sides because they actually assisted in 'the transformation of black young people into "folk devils"' (Pitts,

1993: 99–100). Pitts also criticises Lea and Young's (1984) espousal of Cloward and Ohlin's (1960) 'opportunity theory', and allusion to Merton's (1938) 'anomie', both American theories, because they may not have been entirely appropriate for the British situation. Arguably European strategies are more relevant to the UK than those in the USA (King, 1991), and 'the problems of Britain's post-colonial legacy are more akin to those of France or The Netherlands than the problems of race relations in the USA' (Rushdie, 1982). Thus these are inherent dangers in evoking the 'American analogy' (Pitts, 1993: 110). Black people in the USA largely share a common history and culture, whereas those of black people in the UK are diverse so that the latter cannot be so easily viewed as a homogeneous group.

While American theories may be of *some* relevance to the British situation, Lea and Young's (1984) over-reliance on them as the roots of their theoretical stance may have helped to lessen the credibility of their arguments. Overall, there are strong arguments which suggest that left realists' concept of 'relative deprivation' is untenable and that their stance on 'black' crime and criminality essentially amounts to a racist position, especially in view of its over-reliance on cultural explanations of criminality.

The examination of neo-conservatives', left realists' and critical criminologists' theoretical contributions to explanations of racism/discrimination and criminal justice in this chapter has revealed the highly contested nature of this debate. Explanations offered by neo-conservatives and left realists neglect its ideological implications and are marred by what can only be interpreted as racist overtones, particularly in the case of the former. Overall, both neo-conservatives and left realists fail to realistically account for why it is that black people appear to be singled out as prime targets for criminalization and as the most likely recipients of unduly oppressive treatment throughout the criminal justice process.

Among other misconceptions, such explanations tend to blame black people's

disproportionate rate of adverse contacts with the criminal justice system and over-representation in prison on higher rates of offending in spite of the evidence for this being weak. Furthermore, both neo-conservative and left realist explanations are underpinned by a perverse adherence to individual/cultural explanations of criminality which relegate black people rather than racism as the source of the problem of excessive conflict with the criminal justice system. While these specific criticisms do not apply to explanations put forward by *critical criminologists*, arguably, a shortfall in their analyses on 'race' and criminal justice issues remains because they do not extend far enough to 'explain' the increasing complexity of criminalization and the ways in which racism manifests itself in the criminal justice process.

However, critical criminologists have presented convincing arguments concerning criminalization as a useful weapon nationally in legitimising control methods for crime and disorder, especially against the black community, and in dealing with industrial disputes and protest groups. Furthermore, they have drawn attention to the idea that the power to decide what and who to criminalise remains firmly with dominant groups in society so that their interests in Britain *and* overseas are secured. The debate has been taken further by their stress on the importance of the *ideological* implications of criminality in general, and black criminality in particular, and by their focus on the question of *state* control, rather than *social* control. Ideas on the Marxist-orientated concept of class-criminalization have been usefully linked with questions of how notions of the historical construction of a criminal 'other' have fused with images of 'race' and with notions of the racialization of the debate on crime and disorder (see Chapters 1 and 11). Notwithstanding the limitations of the concepts of 'race' and 'crime' (see Chapters 11 and 12), critical criminology, therefore, offers a much more viable explanation of the implications of black criminality than neo-conservatism and left realism.

'Race' issues do not seem to be able to be resolved either empirically or theoretically.

Given the highly contested concepts of 'race' and 'crime', the elusive nature of racism and its level of its resistance to analysis, it is questionable as to whether criminological theorising can ever fully 'explain' issues of racism/discrimination. Perhaps only some of its facets can be revealed. Arguably, neo-conservatism and left realism only succeed in presenting a distorted view of some of these facets. Critical criminology goes very much further in suggesting plausible ways in which racism/discrimination in relation to criminal justice can be 'explained' theoretically.

Part Two

Black People and Bail

Introduction

Part Two: 'Black People and Bail' provides an overview of 'race' and bail and also details of the research process in this study. Remand prison statistics and concerns about issues relating to bail are addressed in Chapter 5. It discusses the disproportionate number of black people held on remand in custody which raises questions as to whether this results from:

- discriminatory practice operating in the bail system;
- and/or a reflection of institutionalised racism in the criminal justice system;
- and/or a consequence of the tendency for black people to be more criminalised;
- and/or a consequence of black people's propensity towards criminality, particularly in relation to serious offences.

Essentially, do black defendants constitute worse bail risks than their white counterparts, or is bail being unreasonably withheld? The underlying reasons for the over-representation of black people among remand prisoners and the increase in their numbers cannot be deduced from raw statistics. Thus Chapter 5 also considers studies which have included findings on bail generally, as well as those which have specifically included considerations about the possible impact of 'race' on court decision-making on bail. The realization that the number and scope of previous studies which have examined the question of 'race' and bail was so limited helped to provide the impetus for this research.

Taking into account the discussion on various studies on 'race' and criminal justice in Chapters 3 and 5, a research design which would use both quantitative and qualitative methodology was decided upon in this study as set out in Chapter 6. Following a pilot study at Highbury Magistrates' Court, various hypotheses and strategies for the research were formulated and applied to the final study which was carried out at this court and also at Haringey Magistrates' Court. This chapter explains why a multivariate approach to the

quantitative analysis needed to be employed to test the discrimination hypothesis. It also examines the reasons why qualitative analysis, to be drawn from data from a series of interviews from a representative sample of criminal justice practitioners, was imperative in trying to reach an understanding of the significance of 'race' in bail decision-making. It was anticipated that the qualitative analysis would not only provide some insight into aspects of the research area not readily amenable to statistical analysis, but also explore wider issues of 'race' and criminal justice.

Chapter 5

Bail and Remand: An Overview

Remand is another stage in the criminal process where the scales of justice appear to be weighted against black people.

(Institute of Race Relations, 1979: 61)

The granting or refusal of bail is simply one more means by which the police, and by agreement the courts, impose their control over black people. The legal presumption in favour of bail does not even figure in their calculations. Cases involving black defendants may be deliberately allocated to magistrates who are known for their 'tough' approach.

(Gordon, 1983: 101)

Introduction

The bail system in England and Wales comprises police bail and court bail, the main statutory provisions relating to the latter being in the *Bail Act 1976*. The Act does not give a precise definition of bail save that s. 2 states that it 'means bail grantable under the law (including common law) for the time being in force'. A useful description of what bail entails has been given in a report on a research project on bail as follows:

Bail is a mechanism by which the Criminal Justice System seeks to secure the attendance of an individual at a specific place and time as an alternative to continuing to detain that person in custody.

(Northumbria Police, 1991: 1)

Bail may also involve the question of protecting the public from those that the police or the courts may consider to be a potential danger or threat. It may also concern the question of the prevention of further offences.

Bail is considered by magistrates after hearing objections to bail by the prosecution and representations by the defence. If a defendant is not dealt with on first appearance at the magistrates' court, or if a defendant is committed to the Crown Court, the court will remand him/her on bail or in custody before conviction and/or sentence. Although one bench in a magistrates' court is not bound by another bench, it can be argued that in practice there may be some reluctance on the part of magistrates to go against previous decisions on bail by other benches.

The vast majority of the remand prison population is comprised of untried prisoners awaiting trial, the remainder comprising convicted unsentenced prisoners awaiting sentence. All remand prisoners (untried *and* convicted unsentenced, males *and* females) accounted for 1 in 5 of the total prison population 1985–1997, save for 1993 and 1994 when they accounted for 1 in 4. Similar to the total prison population, the remand prison population consists mainly of males, females only forming 4 per cent of remand prisoners from 1985–1997, save for a slight increase to 5 per cent in 1988–9 and 1995–7 (Home Office, 1986–97). Concerns have been raised in recent years about the large proportion of prisoners who have not been given a custodial sentence but are in prison on remand awaiting trial or sentence. In 1990, when the pilot bail survey for this research commenced, untried prisoners made up 84 per cent of the remand population: in 1997, untried prisoners made up 8,453 of the 12,105 remand population, accounting for 70 per cent of the total remand population (Home Office, 1990, 1997).

According to the Penal Affairs Consortium, there is a difference in the length of time spent on remand in custody awaiting trial between cases dealt with the magistrates' court and the Crown Court, the latter being longer. Some prisoners spend much longer time on remand than the average time. If the average waiting time before trial was reduced this could reduce prison over-crowding and the strain on defendants and witnesses (Penal Affairs Consortium, 1995: 11).

Concerns have also emerged specifically about the over-representation of black remand prisoners. It is well established that black people are over-represented in the total prison population, for example, amounting to 1 in 7 prisoners in 1997 (see Introduction; see also headnote Chapter 7). Such over-representation is even more marked in the remand prison population: black prisoners accounted for 1 in 8 remand prisoners in 1997. This could be partly be accounted for by the greater likelihood of black defendants being tried at the Crown Court than white defendants (see Chapter 3). This chapter focuses on the practices and procedures of bail and in particular examines how the decision to grant bail or remand in custody has produced racially determined outcomes.

Whilst in the Introduction and in Chapter 3 one of the key questions raised was whether black people are more *criminal* or more *criminalized*, this chapter notes that as the remand prison population is mostly comprised of *untried* prisoners then *a presumption of innocence* until proven guilty or entitlement to *a presumption in favour of bail* seems less readily applicable to some defendants (see below). Those who are deprived of their liberty in these circumstances may feel that they have been subjected to a criminal justice ‘double jeopardy’. For black defendants such feelings may be intensified further if it is suspected that they have been subjected to discriminatory practices on the grounds of ‘race’. It should be noted from the outset that a large proportion of black defendants remanded in custody are ultimately acquitted (see, for example, Walker, 1989: 365–6; Penal Affairs Consortium, 1995: 12).

This chapter considers the question of discriminatory practices in the bail system and unequal outcomes in terms of ‘race’ in the light particularly of increasing numbers of black remand prisoners since 1985. The first section provides some background on bail and remand and then addresses studies on bail not taking ‘race’ into account. The second section focuses on the position of black people on remand in custody. It examines relevant

statistics, explores issues concerning the over-representation of black remand prisoners, and then discusses studies on bail taking 'race' into account.

Background on Bail and Remand

Certain provisions concerning the granting of bail by magistrates were contained in the *Magistrates' Courts Act* 1952, and in the Crown Court in the *Courts Act* 1971 and *Crown Court Rules* 1971. However, the main provisions in relation to court bail are contained in the *Bail Act* 1976 (see Appendix 1). The presumption in favour of the individual being granted bail was first introduced by the *Criminal Justice Act* 1967, s.18, and subsequently reinforced by the *Bail Act* 1976, s. 4. The *Criminal Justice Act* 1988 introduced two changes to the law on bail: in murder, manslaughter, rape or attempted rape cases where the prosecution opposes bail but bail is granted, the court must state reasons for granting bail; and on each occasion the defendant appears in court the question of bail must be considered. Where a decision has been made, issues of fact or argument need not be re-heard.

Controversies of bail

The issue of court bail and the high number of remand prisoners has remained the subject of 'critical debate' since the mid-1960s. There was an attempt to tighten up bail decision-making in the *Criminal Justice Act* 1967. According to Jones, notwithstanding its endeavours to encourage magistrates to increase the use of bail, the extent to which increases in bail rates immediately after its implementation was due to the legislation remained questionable (Jones, 1985: 106). A study on the effects of the 1967 Act concluded that the restrictions on magistrates' powers to refuse bail had 'very little practical value'. Its main contribution in reducing remand rates was probably because 'the

discussion and passing of this legislation encouraged magistrates to adopt a more liberal policy' (Simon and Weatheritt, 1974).

In 1971 a joint working party was set up by the Home Office and Magistrates' Association 'to examine various aspects of bail' (King, 1971: 1). A series of reports and published papers in the early 1970s (King 1971; Bottomley 1970) still suggested that 'a large number of defendants were being remanded in custody unnecessarily' (Jones, 1985: 106). New legislation was introduced in the *Bail Act* 1976 (implemented in 1978). Jones argues that the new Act did not bring about any 'long term reduction in the proportion of defendants remanded in custody': the rise in custodial remands together with the increase in the average length of stay on remand, resulted in an increase of almost 50 per cent in the daily remand population between 1976 and 1982 (Jones, 1985: 107). Thus the effectiveness of the *Bail Act* 1976 was questionable (see Zander, 1979). Arguably the role of discretion in bail decision-making remained pivotal (see Roshier and Teff, 1980: 113–4).

According to Cape, magistrates do not always appear to be clear about the distinction between the grounds for refusal of bail in the Act and the reasons which may be cited in support of these grounds. He argues that the most commonly cited reasons cited for withholding bail are the fear of absconding and fear of further offences. The fear that the defendant may obstruct justice or interfere with witnesses is likely only to be relevant in serious cases. However, there is no legal requirement on the prosecution to adduce evidence in opposing bail, objections can usually be made simply by assertions (*Re Moles* [1981] Crim LR 170, DC, cited in Cape, 1989: 12) so that the defence may find it difficult to cope effectively with allegations made, although appropriate conditions would allow many of such cases to be adequately dealt with (Cape, 1989: 11–12).

According to the findings in the Northumbria Police study the consideration of the defendant's previous criminal history in deciding the likelihood of a defendant re-

offending can be problematic because 'only a brief outline' of previous convictions is supplied to the courts for remand hearings. The lack of detailed information on how many previous convictions involved offences committed whilst on bail was 'the most serious deficiency'. Information at remand hearings may also be incomplete in establishing whether the defendant has a fixed address, satisfactory community ties, or 'associations with habitual criminals', although the situation may be considerably improved where bail information schemes are in operation. It was argued that the bulk of bail decisions 'are made on the basis of limited information' (Northumbria Police, 1991: 10). Debate on offending on bail intensified following this study which found that over 50 per cent of detected house burglaries and thefts from cars are committed by people on bail for other offences. These results supported the findings of a survey by Avon and Somerset Police earlier in 1991 which claimed that 'bail bandits' (defendants already on bail) carried out up to third of all detected crime (Brookes, 1991). However, this research can be criticised for being comparatively small-scale and for being carried out exclusively by the police. Williams has argued that the manipulation of statistics on 'bail bandits' by the police in the media amounted to a 'moral panic' on bail and re-offending (Williams, 1993: 105).

The Government targeted 'bail bandits' as a specific area where new legislation should be introduced to ensure more severe penalties for offenders convicted of an offence while on bail, and to empower the police 'to immediately arrest those who breached police bail'. A joint Home Office/Association of Chief Police Officers working party would be set up to review the statutory criteria for police bail, and the Judicial Studies Board would review the training of magistrates in the criteria set out in the *Bail Act 1976* (*The Job*, 20 March 1992). As such a backlash has emerged against purported attempts to induce magistrates to show more readiness to grant bail (see NACRO, 1992: 2-3).

In the early 1990s legislative measures were eventually introduced on defendants offending on bail and other matters. The *Criminal Justice Act 1993* specified that courts

should view offending on bail as an ‘aggravating factor’ meriting a more severe sentence; and the *Bail (Amendment) Act* 1993 introduced the right to appeal by the prosecution against the granting of bail (see Cavadino and Gibson, 1993). The *Criminal Justice and Public Order Act* 1994 prohibited the granting of bail in certain serious cases [such as where the defendant is charged with murder, manslaughter of rape and has previously been convicted of such an offence], and the statutory presumption in favour of bail was removed in cases where offences are allegedly committed while on bail (Penal Affairs Consortium, 1995: 2). The ‘harsher climate’ towards bail led to a 22 per cent increase in the number of remand prisoners between 1992 and 1994 (Penal Affairs Consortium, 1995: 12). The Penal Affairs Consortium highlighted the implications of unjustified remands in custody given that nearly 60 per cent of remand prisoners are subsequently acquitted or receive non-custodial sentences:

They are judged not to deserve a prison sentence – yet they have effectively served one ... pre-trial imprisonment may, through loss of employment, accommodation, family and other community ties, have increased the likelihood of subsequent offending. It is therefore essential that the objective of combating offending on bail should be complemented by the further objective of reducing the injustice often suffered by people who are presumed innocent in the eyes of the law.

(Penal Affairs Consortium, 1995: 12)

Arguably the over-riding problem with court decision-making on bail is that there is a lack of official guidance on the *interpretation of statutory criteria on bail* which may increase the scope of *discretion* in this process, and lead to inconsistency in bail outcomes.

Studies on bail not taking ‘race’ into account

An early study, Bottomley (1970), investigated 1,767 cases from the North of England and East Anglia in relation to bail decision-making. The extent of magistrates’ reliance on the police view of the defendant’s reliability and the lack of objective evidence

on the defendant's background was revealed. According to King this study raised concern about the police role and influence over court decision-making on bail and the lack of information made available to the court (King, 1971: 14). In King (1971) bail was granted in 67 per cent out of 1,001 cases in 18 London and 5 provincial magistrates' courts but there was considerable variation between different courts in different areas. Seriousness of the offence and the police view on bail were the only statistically significant factors effecting the decision to refuse bail. It was concluded that magistrates make decisions on bail with very little information on defendants' backgrounds which led to an over-reliance on police recommendations on bail.

Simon and Weatheritt (1974) found that the most important single factor influencing the decision on bail by magistrates was the prior police bail decision, and that there was considerable regional variation in rates of remands in custody. Similarly, in Jones' (1985) evidence of variation in rates of remands in custody also emerged from analysis of data derived from 1980 Home Office *Criminal Statistics*. Out of 222,000 defendants, 15 per cent were remanded in custody. Marginal factors influencing the court remand decision were the age and sex of the defendant, and whether the proceedings were by means of charge or summons. The factors having the most significant influence were the type of offence, court policy and the police bail decision, the latter being the most significant: of those defendants being granted bail by magistrates, 89 per cent had previously been given police bail. Of those defendants remanded in custody, only 49 per cent were eventually given a custodial sentence. However, *Criminal Statistics* data only contains limited information on defendants' characteristics. Further analysis was required.

Morgan and Pearce sought to fill this gap in their Home Office study on remand decisions in magistrates' courts. It was observed that there was considerable variation in 'bail rates' in magistrates' courts according to 1984 and 1985 statistics. Out of 640 petty sessional divisions (PSDs) in England and Wales, in almost 80 PSDs over 25 per cent of

defendants were refused bail, whereas in over 110 PSDs less than 5 per cent were remanded in custody in 1985. For example, Bournemouth PSD had a bail rate of 52 per cent, whereas Brighton, serving a similar type of area, had a bail rate of 82 per cent. (Morgan and Pearce, 1988: 1). The sample, selected from police files (excluding under 17 year olds), comprised 648 and 614 defendants from Bournemouth and Brighton magistrates' courts respectively proceeded against from February to September 1986 (Morgan and Pearce, 1988: 7-8). Overall, failure to appear after being granted bail, being charged with a further offence while on bail, and being of no fixed abode were found to be the most important factors in the decision to remand in custody. However, for the majority of defendants who fell outside of this 'high risk' group the most important factors were the offence (both type and seriousness), whether or not a prison sentence had been previously served, employment status, and the police bail decision (Morgan and Pearce, 1988: 32-3). The researchers suggest that apparent differences in the rates of remands in custody according to area should be treated with caution, since distinguishable police and court policy and practice, before and at the first court appearance respectively, may have a significant impact on custody rates in different courts (Morgan and Pearce, 1988: 2).

Crow and Simon's (1987) study on a total of 3,500 cases from two magistrates' courts in the South-East, two in the North, and two in the West Midlands examined the impact of unemployment on the treatment of offenders. Of the 573 observed remands, very little information on the defendant's background was presented at the pre-trial stage. More detailed information was only presented when the defence made a full bail application, and even then, the defendant's employment status was not always raised. Details about the defendant's employment formed a substantial part of 11 bail applications, only 3 being successful.

A study by the Northumbria Police on re-offending and bail, which analysed 5,990 arrests involving 3,960 individuals in the Tyneside area, found that: 23 per cent of all

those arrested were already on bail at the time of arrest; 89 per cent of defendants were subject to at least one period of bail following an arrest for an offence, and that 18 per cent were re-arrested for an offence during a period of bail (Northumbria Police, 1991: 3). According to the National Association of Probation Officers the main criticism of this research was that it did not take into account whether or not people arrested for other offences whilst already on bail were eventually found guilty or not (*The Guardian*, 5 September 1991). Furthermore:

People already known to the police were often the first to be visited for inquiries about other crimes, said Harry Fletcher, the association's [National Association for the Care and Resettlement of Offenders] assistant general secretary. 'This misleading report could lead to a huge increase in the remand population'. Vivien Stern, director of NACRO, said that the vast majority of people given bail did not abuse it.

(*The Guardian*, 5 September 1991)

A survey of results of studies on offending on bail concluded that there was little difference in the proportion of defendants who were convicted of an offence while on bail over the previous 10 years (Morgan, 1992). A subsequent study found that defendants committed further offences during 14 per cent of bail periods (Hampshire Constabulary and Hampshire Probation Service, 1994). Commenting on this research, the Penal Affairs Consortium argued that on the basis of these available figures undoubtedly offending on bail was a 'substantial problem', however, 'the vast majority of defendants who are granted bail (between 80 and 90%) do not commit offences on bail' (Penal Affairs Consortium, 1995: 3).

Thus some studies have raised the question of regional variation in rates of remands in custody, while others have highlighted the problem of offending on bail. Some have emphasised the influential role of the police in the bail system, and the seriousness of the offence as a key factor in the decision to grant or refuse bail. In spite of various

methodological drawbacks, the above studies demonstrate the complex nature of bail decision-making in the courts, and the wide scope of the exercise of discretion in this process.

Black People on Remand

In 1991, when the fieldwork for the bail survey in this research commenced, there were 965 males and 69 females of West Indian/Guyanese/African on remand in custody which is equivalent to 11 per cent of the remand prison population. There was a slightly larger proportion (3.6/2.7) of Indian/Pakistani/Bangladeshi people in the remand prison population as in the general population, and twice (2.5/1.2) the proportion of Chinese/Arab/Mixed people. There was 7 times (11.2/1.6) the proportion of West Indian/Guyanese/African people in the remand prison population as in the general population. The position was more marked for females than males in this category (Tables 5.1, 5.2). This could be accounted for by a high proportion of such females being charged with serious drugs offences similar to the position in the sentenced prison population (see, for example, Maden *et al.*, 1992).

From 1985–1992, white males increased from 75 to 82 per cent among untried remand prisoners, while West Indian/Guyanese/African males amounted to 10 per cent of untried prisoners in 1985, increasing to 11 or 12 per cent from 1986–1992, save for an increase to 14 per cent in 1989 (Table 5.3). White females increased from 69 to 74 per cent from 1985–1992. West Indian/Guyanese/African females increased from 14 to 21 per cent from 1985–1991, and amounted to 18 per cent in 1992 (Table 5.4). Therefore, black males accounted for about a tenth of untried males and black females accounted for about a fifth of untried females in the remand prison population in the early 1990s.

From 1993–1997, the proportion of white untried males slightly *decreased* from 82 to 80 per cent, whereas black untried males slightly *increased* from 13 per cent in 1993 to

14 per cent from 1994–1996, reverting to 13 per cent in 1997 and accounting for about 1 in 8 among untried male prisoners (Table 5.5). From 1993–1997, white untried females *increased* from 74 to 79 per cent while black untried females *decreased* from 21 to 16 per cent, yet still accounting for 1 in 6 untried female prisoners. The proportion of black females among untried remand prisoners was more marked than that of black males during this period (Table 5.6).

Taking into account estimates based on the Office of National Statistics mid-1997 population figures (see Home Office, 1998: Appendices A1–A2) and the 1991 Census (see Introduction), by 1997, overall, white prisoners remain under-represented in the remand prison population whereas prisoners from minority ethnic groups remain over-represented. In 1997, overall, there were 1,573 black remand prisoners (males and females) which amounted to 8 times (13.0/1.7) the proportion of black people in the general population, and 706 South Asian/Chinese/Other remand prisoners which amounted to 1.5 times (5.8/3.9) the proportion of this group in the general population. Similarly, there were 1,156 black *untried* prisoners (males and females) amounting to 8 times (13.5/1.7) the proportion of black people in the general population, and 524 South Asian/Chinese/Other untried prisoners amounting to just over 1.5 times (6.1/3.9) the proportion of South Asian/Chinese/Other people in the general population (Tables 5.5–5.6).

Therefore, on the basis of a comparison between 1991 and 1997 general population figures and the prison statistics for these years, minority ethnic groups are over-represented in the remand prison population. Moreover, it is clear that black people are *heavily* over-represented.

Deconstructing remand statistics

The disproportionate number of black people held on remand in custody has raised various questions about why this occurs. Questions have also emerged about bail

conditions imposed on black defendants (see Chapter 10). Evidence presented by the Institute of Race Relations (IRR) to the Royal Commission on Criminal Procedure in 1979 raised the issue of bail and remand (see chapter headnote) as a specific area of concern for black people (IRR, 1979: 61; see also 61–4; Gordon, 1990: 45–6). IRR argued that police advice was ‘crucial’ in the outcome of differential decision-making on bail. In relation to bail conditions there appeared to be ‘an increasing tendency for bail conditions to be imposed on black youth, but not on white youth in similar situations’ (IRR, 1979: 61–62).

One example was the more frequent imposition of a condition of curfew for black youth than white youth, sometimes used by the police as an ‘excuse’ to harass such youth and their families on the pretext of checking to see whether the curfew was being observed. Such occurred before the trial of the Lewisham 21 (*Flame*, no. 20, 1978 as cited in IRR, 1979: 62), the case of black youth convicted of Conspiracy to rob on the basis of a video film made during the surveillance of black youth at a particular bus stop (see IRR, 1979: 60). Another example was the imposition of excessively high sureties as in the case of two of the defendants in the Islington 18, black youth aged between 14 and 19 who were charged with ‘Sus’ (Being a suspected person loitering with intent) and Conspiracy (*Flame*, Special edition, March 1977 as cited in IRR, 1979: 62). Gordon argues that this case (where eight defendants were remanded in custody for eight months prior to trial) was a clear example of how the presumption of the right to bail has been easy to rebut, and where bail was granted, of how stringent conditions may be attached; for example, one defendant was required to provide a surety of £3,000 (Gordon, 1990: 45).

Thus where the court does decide to grant bail with a condition of a security or security, defendants from disadvantaged groups, even where small amounts are required, sometimes cannot meet the imposition of such a condition. Given the tendency for black people to be located in lower socio-economic groups, the chances of producing satisfactory sureties or securities may be significantly diminished. IRR also sought to draw to the

attention of the Royal Commission on Criminal Procedure the serious allegation that 'remands can be used against a black defendant' in order 'to conceal police malpractice' and/or 'to demoralise and confuse the defendant'. Some black defendants were subjected to repeated remands at the request of the police but then their cases were dropped owing to lack of evidence. Such repeated remands demoralised defendants and their families (IRR, 1979: 63).

In the 1980s concerns about the increasing remand population, and about the high proportion of black remand prisoners continued (Prison Reform Trust, 1987: 7; Howard League, 1989: 1, 5). The large percentage of black people arrested during the 1980s' riots who were refused bail for Public Order offences and/or subjected to stringent bail conditions highlighted the incidence of discriminatory treatment of black defendants during this period (see, for example, Gordon, 1990: 42; NACRO, 1986: 20; CRE, 1989: 21). Such concerns were exacerbated following the release for the first time of prison statistics giving a breakdown of prisoners by ethnic origin in June 1986. These showed a higher proportion of males from minority ethnic groups in the prison population than whites, particularly among remand prisoners. In 1989 the National Association of Probation Officers requested the Home Office and the Lord Chancellor's Department to develop anti-racism training for the judiciary, and for all sections of the criminal justice system to adopt equal opportunities statements. Appropriate amendments to the *Bail Act* 1976 were specifically recommended 'to ensure that race, culture and background are taken into account before deciding on remand' particularly in view of the continuing discrimination against black people in bail decision-making (*The Guardian*, 18 December 1989).

In the 1990s, concern continues about the high proportion of black defendants remanded in custody generally (see, for example, *The Observer*, 6 May 1990; and Hood, 1992), and specifically about those who were eventually acquitted, or given a non-

custodial sentence (see Home Office, 1992a: 15; Home Office 1994a: 23). The Society of Black Lawyers considered initiating an application in the European Court on the grounds that black people's treatment by the criminal justice system, particularly as evidenced by the disproportionate number of black defendants remanded in custody generally and of those subsequently acquitted, constituted 'administrative racism' amounting to a violation of articles of the European Convention (SBL as quoted in Mole, 1990):

Concern about the inadequate provision of bail hostel accommodation for black defendants was raised in a CRE report highlighted the problem of homelessness for black defendants (which decreases chances of bail). Discrimination against black defendants may occur when probation staff make the decision whether or not to make a referral to a bail hostel, and when hostel staff decide whether or not to admit or refuse bailees (CRE, 1990: 20). The disproportionate number of black defendants remanded in custody by the courts for the preparation of psychiatric reports has also been identified as specific area of concern. NACRO has alleged that such black defendants are less likely to be granted bail than whites, and more likely to 'undergo compulsory psychiatric treatment' (*The Guardian*, 10 December 1990).

Lord Taylor, the Lord Chief Justice, also identified as a specific cause for concern the tendency for black defendants to be more likely to be remanded in custody than whites in a speech to the Leeds Race Issues Advisory Council in 1995. He endorsed a recommendation by the Criminal Justice Consultative Council for a system for comprehensive data collection to identify where discrimination occurred (*The Guardian*, 1 July 1995). Similarly in 1996 in a review of criminal justice and 'race' issues, the National Association of Probation Officers (NAPO) and the Association of Black Probation Officers (ABPO) highlighted the over-representation of black remand prisoners as one aspect of 'the range of negative experiences' of black people in the criminal justice system (NAPO/ABPO, 1996: 1, 8).

Table 5.1: All male remand prisoners (untried *and* convicted unsentenced) on 30 June: by ethnic origin, 1985–92

	Ethnic origin											
	White	West Ind/ Guyan- ese/ African	Indian/ Pakist- ani/ Banglad -eshi	Chinese /Arab /Mixed origin	Other /not record- ed	Totals						
Year	Row %		Row %		Row %		Row %		Row %			
1985	7,227	(76)	949	(10)	227	(2)	224	(2)	904	(10)	9,531	(100)
1986	7,437	(78)	1,088	(11)	246	(3)	184	(2)	644	(7)	9,599	(100)
1987	8,175	(79)	1,099	(11)	242	(2)	225	(2)	562	(6)	10,303	(100)
1988	8,130	(79)	1,069	(10)	256	(3)	242	(2)	602	(6)	10,299	(100)
1989	7,626	(78)	1,277	(13)	244	(3)	199	(2)	442	(5)	9,788	(100)
1990	7,064	(81)	1,019	(12)	231	(3)	202	(2)	240	(3)	8,756	(100)
1991	7,394	(83)	965	(11)	226	(3)	205	(2)	86	(1)	8,876	(100)
1992	7,676	(83)	968	(11)	256	(3)	243	(3)	57	(1)	9,200	(100)

Table 5.2: All female remand prisoners (untried *and* convicted unsentenced) on 30 June: by ethnic origin, 1985–92

	Ethnic origin											
	White		West Ind/ Guyanese/ African		Indian/ Pakistani/ Bangladeshi		Chinese /Arab /Mixed origin		Other /not recorded		Totals	
Year	Row %		Row %		Row %		Row %		Row %		Row %	
1985	289	(71)	54	(13)	10	(3)	22	(5)	33	(8)	408	(100)
1986	255	(70)	47	(13)	9	(3)	17	(5)	38	(10)	366	(100)
1987	254	(69)	65	(18)	5	(1)	16	(4)	35	(10)	366	(100)
1988	330	(64)	92	(18)	9	(2)	17	(3)	67	(13)	515	(100)
1989	321	(67)	76	(16)	5	(1)	14	(3)	60	(13)	476	(100)
1990	252	(70)	62	(17)	3	(1)	19	(5)	21	(6)	357	(100)
1991	280	(72)	69	(18)	4	(1)	23	(6)	11	(3)	387	(100)
1992	275	(77)	60	(17)	3	(1)	15	(4)	6	(2)	359	(100)

Table 5.3: Male remand prisoners on 30 June: by ethnic origin and type of prisoner, 1985-92 (row percentages in brackets)

Type of prisoner and year	Ethnic origin											
	White		West Ind/ Guyanese/ African		Indian/ Pakistani/ Bangladeshi		Chinese /Arab /Mixed origin		Other /not recorded		Totals	
	Row %	Row %	Row %	Row %	Row %	Row %	Row %	Row %	Row %	Row %	Row %	
Untried												
1985	5,979	(75)	813	(10)	212	(3)	193(2)	(2)	791	(10)	7,988	(100)
1986	6,218	(77)	951	(12)	218	(3)	161(2)	(2)	555	(7)	8,103	(100)
1987	6,960	(79)	965	(11)	225	(3)	200(2)	(2)	489	(6)	8,839	(100)
1988	6,761	(78)	940	(11)	224	(3)	212(3)	(3)	519	(6)	8,656	(100)
1989	6,094	(77)	1,098	(14)	213	(3)	167(2)	(2)	371	(5)	7,943	(100)
1990	5,612	(80)	874	(12)	196	(3)	165(2)	(2)	186	(3)	7,033	(100)
1991	5,828	(82)	807	(11)	196	(3)	172(2)	(2)	71	(1)	7,074	(100)
1992	6,009	(82)	821	(11)	210	(3)	203(3)	(3)	49	(1)	7,292	(100)
Convicted un-sentenced												
1985	1,248	(81)	136	(9)	15(1)	(1)	31(2)	(2)	113	(7)	1,543	(100)
1986	1,219	(82)	137	(9)	28(2)	(2)	23(2)	(2)	89	(6)	1,496	(100)
1987	1,215	(83)	134	(9)	17(1)	(1)	25(2)	(2)	73	(5)	1,464	(100)
1988	1,369	(83)	129	(8)	32(2)	(2)	30(2)	(2)	83	(5)	1,643	(100)
1989	1,532	(83)	179	(10)	31(2)	(2)	32(2)	(2)	71	(4)	1,845	(100)
1990	1,452	(84)	145	(8)	35(2)	(2)	37(2)	(2)	54	(3)	1,723	(100)
1991	1,566	(87)	158	(9)	30(2)	(2)	33(2)	(2)	15	(1)	1,802	(100)
1992	1,667	(87)	147	(8)	46(3)	(3)	40(2)	(2)	8	-	1,908	(100)

Table 5.4: Female remand prisoners on 30 June: by ethnic origin and type of prisoner, 1985-92

	Ethnic origin											
	White		West Ind/ Guyanese/ African		Indian/ Pakistani/ Bangladeshi		Chinese /Arab /Mixed origin		Other /not recorded		Totals	
	Row %		Row %		Row %		Row %		Row %		Row %	
Type of prisoner and year												
Untried												
1985	212	(69)	42	(14)	6	(2)	19	(6)	29	(9)	308	(100)
1986	210	(68)	43	(14)	9	(3)	15	(5)	30	(10)	307	(100)
1987	195	(65)	57	(19)	4	(1)	13	(4)	31	(10)	300	(100)
1988	260	(61)	85	(20)	9	(2)	14	(3)	61	(14)	429	(100)
1989	245	(65)	70	(19)	5	(1)	11	(3)	47	(12)	378	(100)
1990	190	(68)	56	(20)	3	(1)	18	(6)	13	(5)	280	(100)
1991	195	(68)	60	(21)	3	(1)	18	(6)	10	(4)	286	(100)
1992	198	(74)	49	(18)	2	(1)	13	(5)	4	(2)	266	(100)
Convicted un-sentenced												
1985	77	(77)	12	(12)	4	(4)	3	(3)	4	(4)	100	(100)
1986	45	(76)	4	(7)	-	-	2	(3)	8	(14)	59	(100)
1987	50	(76)	8	(12)	1	(2)	3	(5)	4	(6)	66	(100)
1988	70	(81)	7	(8)	-	-	3	(4)	6	(7)	86	(100)
1989	76	(78)	6	(6)	-	-	3	(3)	13	(13)	98	(100)
1990	62	(81)	6	(8)	-	-	1	(1)	8	(10)	77	(100)
1991	85	(84)	9	(9)	1	(1)	5	(5)	1	(1)	101	(100)
1992	77	(83)	11	(12)	1	(1)	2	(2)	2	(2)	93	(100)

Table 5.5: Male remand prisoners on 30 June: by ethnic origin and type of prisoner, 1993-97

	Ethnic origin										
	White		Black		South Asian		Chinese /Other		Un-recorded		Totals
	Row %		Row %		Row %		Row %		Row %		Row %
Type of prisoner and year											
All on remand											
1993	8,491	(83)	1,260	(12)	278	(3)	74	(1)	127	(1)	10,230 (100)
1994	9,881	(82)	1,535	(13)	313	(3)	262	(2)	11	-	12,002 (100)
1995	8,635	(82)	1,376	(13)	266	(3)	273	(3)	11	-	10,561 (100)
1996	8,881	(81)	1,528	(14)	318	(3)	287	(3)	8	-	11,022 (100)
1997	9,352	(81)	1,481	(13)	341	(3)	334	(3)	10	-	11,518 (100)
Untried											
1993	6,227	(82)	977	(13)	213	(3)	51	(1)	96	(1)	7,564 (100)
1994	7,179	(81)	1,217	(14)	250	(3)	215	(2)	5	-	8,866 (100)
1995	6,095	(80)	1,077	(14)	209	(3)	224	(3)	8	-	7,613 (100)
1996	6,392	(80)	1,155	(14)	254	(3)	223	(3)	4	-	8,028 (100)
1997	6,540	(80)	1,089	(13)	248	(3)	251	(3)	6	-	8,134 (100)
Convicted un-sentenced											
1993	2,264	(85)	283	(11)	65	(2)	23	(1)	31	(1)	2,666 (100)
1994	2,702	(86)	318	(10)	63	(2)	47	(2)	6	-	3,136 (100)
1995	2,540	(86)	299	(10)	57	(2)	49	(2)	3	-	2,948 (100)
1996	2,489	(83)	373	(13)	64	(2)	64	(2)	4	-	2,994 (100)
1997	2,812	(83)	392	(12)	93	(3)	83	(3)	4	-	3,384 (100)

Table 5.6: Female remand prisoners on 30 June: by ethnic origin and type of prisoner, 1993-97

	Ethnic origin										
	White		Black		South Asian		Chinese /Other		Un-recorded		Totals
	Row %		Row %		Row %		Row %		Row %		Row %
Type of prisoner and year											
All on remand											
1993	297	(74)	83	(21)	7	(1)	-	-	15	(4)	402 (100)
1994	392	(80)	81	(17)	5	(1)	13	(3)	-	-	491 (100)
1995	373	(75)	94	(19)	5	(1)	23	(5)	-	-	495 (100)
1996	417	(76)	97	(18)	5	(1)	27	(5)	-	-	576 (100)
1997	464	(79)	92	(16)	5	(1)	26	(4)	-	-	587 (100)
Untried											
1993	218	(74)	62	(21)	5	(2)	-	-	8	(3)	293 (100)
1994	278	(79)	61	(17)	3	(1)	8	(2)	-	-	350 (100)
1995	240	(71)	75	(22)	4	(1)	18	(5)	-	-	337 (100)
1996	307	(76)	73	(18)	3	(1)	21	(5)	-	-	404 (100)
1997	337	(79)	67	(16)	4	(1)	21	(5)	-	-	429 (100)
Convicted un-sentenced											
1993	79	(73)	21	(19)	2	(2)	-	-	7	(6)	109 (100)
1994	114	(81)	20	(14)	2	(1)	5	(4)	-	-	141 (100)
1995	133	(84)	19	(12)	1	(1)	5	(3)	-	-	158 (100)
1996	110	(78)	24	(17)	2	(1)	6	(4)	-	-	142 (100)
1997	127	(80)	25	(16)	1	(1)	5	(3)	-	-	158 (100)

Studies on bail taking 'race' into account

Crow and Cove's research on differential treatment for ethnic minorities in 4 juvenile courts (one in the North and 3 in London), 3 magistrates' courts (one in the North, one in the Midlands, and one in London), and 2 Crown Courts (one in the North and one in London) in 1983 was one of the first studies to include findings on 'race' and bail issues. Out of 668 cases (including 13 per cent black and 4 per cent Asian defendants), white, black and Asian groups were found to be 'broadly similar in terms of whether or not they had been remanded at all and, if so, whether on bail or custody' (Crow and Cove, 1984: 415).

However, in Walker's (1989) analysis of Metropolitan Police Division (MPD) prosecutions in 1983 of 13,686 defendants aged 17-20 and 8,732 aged 21-25 tried at magistrates' courts; and 2,998 aged 17-20 and 2,225 aged 21-25 tried at the Crown Courts (including 62 per cent black and 5 per cent Asian males aged 17-20; and 22 per cent black and 3 per cent Asian males aged 21-25) it was found that a higher proportion of black defendants were refused police bail and remanded in custody by magistrates in both age groups for both indictable-only and triable-either-way offences. In the Crown Court the proportion of black and white defendants remanded in custody was the same in the younger age group, but in the older age group, significantly more black defendants were remanded in custody (Walker, 1989: 363, 365). As Fitzgerald points out, Walker found that a higher proportion of black defendants who were remanded in custody were ultimately acquitted in the Crown Court, but it is not indicated whether the difference in the figures given of 14 per cent for black and 11 per cent for white defendants is significant (Fitzgerald, 1993: 20).

Other studies have suggested various factors which could influence differential treatment in remand decision-making. According to Gordon, referring to findings in Jones' (1985) study (see above) which identified the police bail decision as the most

significant factor, the impact of possible discriminatory exercise of discretion by the police may have repercussions on the court bail decision for black defendants:

a decision by the police to refuse release influences the court in its decision whether to grant bail and if the police are exercising their discretion in a racist manner this will be further compounded, rather than alleviated, by the decision of the court.

(Gordon, 1990: 46)

The tendency for black defendants to be refused police bail more than white defendants (Walker, 1989; Shallice and Gordon, 1990) may diminish black defendants' chances of being granted bail in the magistrates' court, not only because magistrates are influenced by the police decision on bail, but also because it may have an adverse effect on such defendants' demeanour at court bail applications:

Those of us who have appeared for defendants who have been kept in their cells for any length of time know that they do not appear at their best the next morning.

Black defendants are often rightly resentful of the fact that although they have supplied a name and address, they have been denied police bail. This resentment manifests itself in an attitude of defiance.

(*New Law Journal*, 17 May 1991)

Macleod (1991) carried out a study primarily to assess the effect of the introduction of tape-recording of suspects which included the collection of data on a sample of 3,447 suspects taken to the Leicester Police Station between November 1983 and December 1985: 8 per cent of males and 0.5 per cent of females were remanded in custody. It was found that ethnic origin, gender, previous convictions, age and type of offence could influence the bail decision, and that the most frequently cited justification for the refusal of bail was 'gravity of the offence'. This was cited in 67 per cent of all cases where the

defendant was remanded in custody, and in over 77 per cent of cases involving black defendants. When 'race' and gender were controlled for:

amongst males the proportion of Blacks refused bail was higher than for whites which was in turn higher than that of Asians. The differences observed in these proportions are very much greater than can be accounted for by chance. There are no differences evident in the equivalent tabulation for females. There is thus *prima facie* evidence of differential treatment of male suspects from different racial groups.

(MacLoed, 1991: 224)

It was acknowledged, however, that the analysis did not take into account many other factors which influence the bail decision (MacLoed, 1991: 225).

The type and seriousness of the offence, and of those given a custodial sentence, sentence length, were the key factors found to affect the proportion of defendants remanded in custody July 1984–March 1985. Controlling for these variables, the proportion of African-Caribbean defendants remanded in custody was higher than for whites, however, significant differences only occurred in some offence and sentence length groups (Home Office, 1986a). MPD figures for 1985 and 1986 showed that in all offence groups (except Robbery) African-Caribbeans were more likely than whites to have been remanded in custody by magistrates prior to being committed for trial (Home Office, 1989b).

Shallice and Gordon's study of four London Magistrates' Courts over an eleven-week period in 1985 was conducted primarily for the purpose of assessing whether the 'race' of the defendant had any influence on sentencing, but some data on bail were also included. It was found that although nearly a half of black defendants were refused police bail as compared to a third of white, only 2 per cent more black defendants were refused bail by magistrates than white defendants, such difference not being statistically significant. Black defendants placed on bail had conditions imposed on their movements

regarded as reliable'. Similarly, Voakes and Fowler's (1989) study of 663 adult offenders (including 5 per cent of African-Caribbean and 10 per cent of Asian appearance) where pre-sentence reports had been prepared in Bradford magistrates' and Crown Courts April–July 1987 found no evidence in bail decision-making but, as Fitzgerald points out, no distinction was made in terms of court, type of bail or offence (Fitzgerald, 1993: 20).

Some findings on bail were included in Hood's study of nearly 6,000 defendants (see Chapter 3). It was found that a significantly higher proportion of black defendants appeared for sentence having been remanded in custody: 26 per cent black defendants as compared to 20 per cent white and 18 per cent Asian. Further analysis was undertaken to determine whether this was the outcome of criteria which should determine the bail/custody decision being unequally applied. Thus Hood constructed a 'Custody Remand Score' based on the following variables which were 'known to be legally relevant to the bail/custody decision': the seriousness of the offence, whether the defendant was in breach of a court order, whether a custodial sentence had previously been served, whether there was evidence of an unsettled lifestyle, whether there was evidence of no fixed abode or living in privately rented accommodation, whether the defendant was unemployed or not regularly in employment, whether the case was to be contested. When the cases were 'matched' according to the weight of these variables, the findings provided evidence that 'black defendants still had a greater likelihood of being remanded in custody' (Hood, 1992: 146–9, Figure 25; Table 26). Hood concluded that:

After taking these factors into account it was estimated that blacks had been remanded in custody at a rate of between 3.5 and 4 percentage points higher than for whites, which on the basis of an expected rate for blacks of 22% amounted to a greater probability of about 16 per cent.

(Hood: 1992: 205)

All of the above studies, save for Crow and Cove (1984), Voakes and Fowler (1989), and Walker (1989) solely in relation to findings concerning 17–20 year olds in the Crown Court, have found some evidence that black defendants are remanded in custody at a higher rate than white defendants. Some have found ethnic differences in the rates of remands in custody remain unexplained even when other relevant variables besides ‘race’ are taken into account. Nevertheless, some methodological inadequacies, and, save for Hood (1992), the relatively unsophisticated statistical techniques of these studies cast some of their findings into doubt (see Chapter 3).

Similar to the studies on sentencing, it has proved extremely difficult to isolate a ‘race effect’ in bail decision-making. Notwithstanding the shortcomings associated with quantitative methods, further quantitative research employing sophisticated statistical techniques may be a useful tool in trying to reveal this. Moreover, qualitative research, which so far has not been undertaken in this field, would be essential in the development of an understanding of issues relating to ‘race’ and bail and remand as well as other aspects of the criminal justice process. These points are addressed further in Chapter 6 in relation to the methodology in this research.

Chapter 6

A Study on Bail: The Research Process

Discrimination against black people in our courts is something that can very easily be observed or experienced, but seems curiously unamenable to endorsement by systematic research.

(Hudson, 1989: 24)

Discrimination is most difficult to prove. If you ask any of the agencies involved, they will say race was not an important factor in their decision-making.

(Mhlanga, as quoted in *The Independent*, 11 June 1997)

Introduction

This chapter describes the aims and methods of this study on bail and black people in England and Wales and the development of its research design. The starting point of this study was the examination of official statistics which showed the disproportionate rate of adverse contacts of black people with the police and the overrepresentation of black people in the prison population, particularly in the remand prison population (see Introduction; Chapters 2 and 5). At the outset and throughout the research process a literature search and review was undertaken which facilitated an examination of previous research, and helped to identify areas and issues relevant for this study and those requiring further research.

As a black person and former practising solicitor in areas with a sizable minority ethnic population in private practice with a large caseload in criminal law (in the London Borough of Hackney), in 2 Law Centres (in the London Boroughs of Hackney and Camden), and a voluntary organisation (the Children's Legal Centre), the researcher had

some knowledge of and insight into the criminal justice system in general, and 'race' issues in particular. The researcher's theoretical standpoint is derived from critical criminology (see Chapter 11). Nevertheless, in this study on bail both qualitative and *quantitative* methodologies were employed as described below. At the outset it is acknowledged that there is a mismatch between the use of quantitative methodology and theorizing from critical criminology.

It is immediately apparent that the use of quantitative methods suggests an inconsistency with the critical tradition which is based on a *qualitative* and *critical* rather than a quantitative and atheoretical approach (see Chapter 4). Notwithstanding this contradiction, the decision by the researcher to adopt a combination of quantitative and qualitative methodologies for this study on black people and criminal justice was thought to be appropriate. It was considered that statistical techniques could provide a useful means of trying to uncover some indication of the nature and extent of any difference in treatment between black and white defendants in bail decision-making at particular courts from bail survey data. From qualitative analyses, it was anticipated that key themes on underlying factors effecting remand decisions could be drawn out, and the views of various informants on bail issues and wider issues on 'race' and criminal justice could be explored.

Critical criminologists have used various methods in carrying out research (see Jupp, 1996: 16), and this has not completely precluded the use of *quantitative* in addition to qualitative methods by a leading proponent of critical criminology, Tony Jefferson (see Walker *et al.*, 1992; Jefferson and Walker, 1992; see also Chapter 4). However, it is acknowledged that the adoption a quantitative approach conflicts with critical criminology's stance in favour of non-quantitative methodologies and shift away from positivist methodologies. It is important to note that careful consideration was given to the downside of quantitative research both in terms of conduct and interpretation and to the advantages of qualitative research. During this study on bail the use of empirical methods

was approached with an awareness that it should be used selectively and that empirical evidence must be interpreted with caution (see below).

Moreover, it was decided that quantitative analyses would only be undertaken *in conjunction* with qualitative analyses. Some writers have suggested that this combination of research strategy is to be preferred (Walker, 1987; Hudson, 1989; Hood, 1992; Mhlanga, 1997: 6-7). Reiner has argued that even if all relevant factors are taken into account discrimination cannot be proved or disproved by statistical evidence *alone* – or observational methods *alone* (Reiner, 1989: 12). Given the inherent difficulties associated with criminological research which aims to uncover discrimination in the criminal justice process (see Chapter 2, 3 and 5), the use of two contrasting types of research methodology such as quantitative and qualitative may produce more far-reaching results than only one method of research, possibly similar to the implementation of dual ‘hard’ and ‘soft’ sales or fighting techniques.

A pilot study on bail was undertaken at Highbury Corner Magistrates’ Court (‘Highbury’) to assist with the preparation of the quantitative research in the final study at two courts, and to explore the range of informants and relevant questions which would provide the basis of the qualitative research. Invaluable experience was gained from the pilot study, details of the development of which and main findings are addressed in the first section of this chapter.

The remainder of the research process, involving the collection and storage of the *quantitative and qualitative data in readiness for their analyses for the final study*, is set out as follows: the research aims, methods, and strategies are described in the second section; the third focuses on the quantitative part of the research and provides details of access, sampling, and variables used in the bail surveys. The fourth section addresses the qualitative part of the research and describes how access was arranged with informants, sampling, and how the interviews were conducted and transcribed.

The Pilot Study

Highbury was selected as a suitable court for research because of its location in Islington, a north London borough in a typical inner-city area, which could provide a representative sample of defendants with a sizable population from minority ethnic groups, including a large proportion of black people. According to the 1991 Census minority ethnic groups accounted for 18.7 per cent of the population in Islington: 10.5 per cent were black, 3.5 per cent were South Asian, and 4.7 per cent were Chinese or Other (Office for National Statistics, 1991). In addition to servicing Islington, Highbury also services parts of the adjoining boroughs of Camden and Hackney. Highbury was also chosen because a bail information scheme operates at the court, and it was anticipated that if the co-operation of the bail information officer was obtained, this would ease access to the court, aid contact with the probation service, and provide useful information which might not otherwise have been made available. Another advantage was that the researcher was already familiar with the court in the capacity as a former practising solicitor and had been in attendance on several occasions in the past.

Negotiating access

Following early meetings with the Society of Black Lawyers (SBL), the researcher observed cases from the public gallery at Highbury on a few occasions, taking particular note of issues raised about bail. In order to help with access to the court itself and possibly court documents and personnel, it was clear that the co-operation of the probation service would be essential. The Association of Black Probation Officers was contacted, and both the vice-chairperson and south region convenor agreed in principle to support the proposed research.

This was made known to the bail information officer at Highbury with whom initial contact was made about the proposed research. He advised writing a letter to the senior

probation officer explaining the nature of the research and requesting a meeting with the court duty team whose duties include seeing defendants appearing in court, sitting in court during hearings to provide appropriate assistance (for example, making enquiries about the availability of bail hostel places), and presenting pre-sentence reports. At a meeting with the court duty team it was agreed that the probation service would help the researcher to obtain full court lists (providing the defendants' names, dates of birth, addresses, and charges) when cases were observed, and allow use of the court duty team's room. The researcher secured the help of the bail information officer in seeking permission to sit in the main body of the courtroom. He advised writing directly to the senior chief clerk of the court outlining the aims of the research and asking for permission to sit in the body of the court to carry out a bail survey. Following a prompt reply agreeing to this request, the bail information officer introduced the researcher to the court staff who provided court lists, and to the police inspector who agreed to provide the researcher with a pass to sit in court. Once the initial problems of access had been eased, the pilot study could be commenced, the problems of gate-keeping having been largely overcome by the assistance received from the probation service.

During the course of the pilot study, two further problems of access arose: the request to the chief court clerk to be given access to court records of the 'Full Bail Argument' forms, and the request to the Crown Prosecution Service for a copy of Form 609 (List of previous convictions) in relation to defendants in the sample were both refused. The first of these ultimately proved not to be a great drawback since details regarding the existence and substance of full bail arguments were often given in open court. The second was more problematic because accurate details of defendants' criminal histories, such as the number of previous convictions and whether custodial sentences had been served, could have enhanced the quantitative analysis. However, in many cases the researcher was able to get a glimpse of the copy of Form 609 (usually as it was being

handed up to the bench from the CPS *via* the court clerk) so that some idea of the *number* of previous convictions was obtained. In some cases the probation service provided these details and other relevant information. Some follow-up information was also obtained from the CPS (for example, details about charges) and from solicitors after explaining the nature and purpose of the research and the commitment to confidentiality.

Hypotheses and sampling

Following early reading of previous research on bail, examination of relevant official statistics, discussions with the SBL, and initial observation of cases at Highbury, four hypotheses were formulated:

- 1 that black defendants are remanded in custody at a higher rate than for comparable white defendants;
- 2 that bail conditions for black defendants are more severe than for comparable white defendants;
- 3 that black female defendants are remanded in custody at a higher rate and receive harsher bail conditions than black and white male defendants and for white female defendants;
- 4 that the decision on bail (as with other court decisions) is geographically and court specific, dependent largely on different 'court cultures' and thus subject to significant disparity

In order to commence the testing of these hypotheses, a pilot bail survey was conducted at Highbury. Observations (totalling approximately 54 hours of observation over 27 sessions) were made on cases in Courts 1–3 at Highbury during morning hearings between 11 October 1990 and 14 January 1991. Data was collected from all three courtrooms in order to ensure that the sample was representative, with a sizeable proportion of black defendants, and sufficiently large for statistical analysis. Cases were observed from the press seats in the court in the order that they were entered on the list and/or as decided upon by the magistrates.

Table 6.1: Pilot bail survey: original sample by race and sex

		Race											
		White			Black			Asian			Totals		
Sex		Col%	Row%		Col%	Row%		Col%	Row%		Col%	Row%	
Males	236	(95)	(77)	64	(83)	(21)	6	(100)	(2)	306	(92)	(100)	
Females	12	(5)	(48)	13	(17)	(52)	0	-	-	25	(8)	(100)	
Totals	248	(100)	(75)	77	(100)	(23)	6	(100)	(2)	331	(100)	(100)	

Table 6.2: Pilot bail survey: final sample by race and sex

	Race							
	White				Black			
	Col% Row%		Col% Row%		Col% Row%		Col% Row%	
Sex								
Males	94	(87) (64)	52	(83) (36)	146	(85) (100)		
Females	14	(13) (56)	11	(18) (44)	25	(15) (100)		
Totals	108	(100) (63)	63	(37) (100)	171	(100) (100)		

The original sample for the pilot bail survey included data on all cases observed as shown in Table 6.1. However, owing to some data being incomplete, the original sample was reduced to include only those cases where sufficient information on the various fields was available for any meaningful analysis. Cases where defendants were only sentenced by the court (and the position regarding bail was not revealed) and Asians (as there were so few) were excluded from the final sample as shown in Table 6.2.

Variables analysed

During observations data was recorded on a standard 'Court Bail Survey' form (Appendix 2). At the outset statistical analysis by means of an appropriate statistical computer program was envisaged, so the information was recorded on computer initially by means of Dbase III, a relational database for storing and analysing data, and then transferred to Minitab, a general purpose statistical system. There were two types of variables:

- 1 dependent or response variables (for example, BAIL REFUSED, and TYPE OF BAIL); and,
- 2 independent or explanatory variables (for example, RACE, and AGE).

Two independent variables required special consideration in relation to their interpretation. Firstly, since it was realised at the outset that seriousness of offence was an important variable in the bail decision-making process (see Chapter 5), somehow this had to be quantified. This was done by creating a 'rating' variable whereby a numerical rating was given to each offence charged in relation to the maximum sentence provided by law for the offence (Appendix 3). The more serious offences were given a high rating. It had to be organised in such a way so that in cases where there were several lesser charges, the total rating did not add up to a higher total than for a more serious charge, for example, manslaughter was rated at 6000, and common assault was rated at 50.

Secondly, the degree of severity of bail conditions, if imposed, had to be quantified. So as to avoid arbitrary quantification, it was decided to set up a panel of experts ('panel') to give their opinion on the level of severity of each type of bail condition, of which 16 were recorded. The panel consisted of 6 barristers (one black and one white female, and two black and two white males) who had been called to the Bar for at least 5 years and had considerable experience in practising in the criminal law (Appendix 4). Each panel member was sent a form listing 16 common bail conditions and asked to indicate out of a score of 100 the degree of severity of each condition.

In effect, the panel had been asked to rank the various bail conditions from 1 to 16 by means of a notional scale of 1 to 100. Kendall's Coefficient of Concordance (W) was the statistical method used to rank the panel's ratings (Kendall, 1962). One of the less frequently used and rather vague conditions, 'to be available as and when required to enable inquiries or reports to be made', was dropped in order to improve the analysis (see Appendix 5). By this means, from the averaged ranking of severity for each of the 15 remaining bail conditions a weight of severity was calculated so that a high score meant 'more severe': reporting to the police station daily, was calculated to be the most severe bail condition, followed by curfew, and bail hostel. The relevant variable, BAIL CONDITIONS IMPOSED, was thus subsequently re-named SEVERITY RATING OF BAIL CONDITIONS. Fifteen fields were created (for each possible variable) and the data was recorded by assigning the appropriate score to each field or fields, if conditional bail was imposed: for example, 5.50 for residence, or 11.92 for surety. Where no bail conditions were imposed a score of 0.00 was entered. Where two or more bail conditions were imposed, the scores were added together (see Appendix 7 [19]).

It became apparent that certain information was too incomplete or difficult to quantify to be included, for example, physical appearance/manner. Also certain categories were specifically created as a field which were not specifically included on the original

Court Bail Survey form, although the information was gleaned from notes made on it; for example, charge(s), if any, which were withdrawn, and whether the hearing observed was the first appearance of the defendant in the current proceedings. Thus the survey design was adapted to some extent as the data was being recorded. The initial 33 variables used in the pilot bail survey were:

1) RACE (2) AGE (3) SEX (4) EMPLOYMENT (5) FAMILY/COMMUNITY TIES (6) ACCOMMODATION (7) COURT (8) TYPE OF MAGISTRATE (9)-(14) CHARGES[S] 1-6 (15) RATING [FOR CHARGES] (16) NUMBER OF CO-DEFENDANTS (17) BAIL REFUSED (18) TYPE OF BAIL GRANTED (19) EXCEPTION[S] TO RIGHT TO UNCONDITIONAL BAIL (20) REASON[S] FOR FINDING EXCEPTION[S] TO RIGHT TO UNCONDITIONAL BAIL (21)-(25) BAIL CONDITION[S] IMPOSED (26) SCALE OF RESTRICTIVENESS OF BAIL CONDITIONS (27) DETAILS OF PREVIOUS CONVICTIONS (28) NUMBER OF PREVIOUS CONVICTIONS (29) TYPE OF MOST SERIOUS PREVIOUS CONVICTION (30) RATING FOR PREVIOUS CONVICTION[S] (31) CURRENT OFFENCE[S] COMMITTED WHILE ON BAIL (32) TYPE OF MOST SERIOUS OFFENCE COMMITTED ON BAIL (33) FULL BAIL APPLICATION.

The above variables were initially expanded to 64 to allow for more details to be collected as follows:

(1)-(15) as above (16) CHARGE WITHDRAWN (17) NUMBER OF CO-DEFENDANTS (18) POLICE BAIL (19) FIRST APPEARANCE (20) BAIL PREVIOUSLY GRANTED BY COURT (21)-(25) OBJECTIONS TO BAIL 1-5 (26) ALREADY ON BAIL IN OTHER CASE[S] (27) BAIL REFUSED (28) REMANDED IN CARE OF LOCAL AUTHORITY OR TO FELTHAM YOUNG OFFENDERS' INSTITUTION (29) BAIL PREVIOUSLY GRANTED BUT CONDITION[S] BREACHED (30) PREVIOUSLY REMANDED IN CUSTODY BY COURT (31) PREVIOUSLY GRANTED BAIL WITH CONDITION OF SURETY OR SECURITY BUT UNABLE TO MEET CONDITION (32) TYPE OF BAIL GRANTED (33)-(35) EXCEPTION[S] TO RIGHT TO UNCONDITIONAL BAIL (36)-(38) REASON[S] FOR FINDING EXCEPTION[S] TO RIGHT TO UNCONDITIONAL BAIL (39)-(53) BAIL CONDITION[S] IMPOSED (54) DETAILS OF PREVIOUS CONVICTIONS (55) NUMBER OF PREVIOUS CONVICTIONS (56)-(58) TYPE OF PREVIOUS CONVICTION[S] (59) RATING FOR PREVIOUS CONVICTION[S] (60) CURRENT OFFENCE[S] COMMITTED ON PAROLE, ON LICENCE, OR 'ON THE RUN' (61) CURRENT OFFENCE[S] COMMITTED WHILE ON BAIL (62)-(63) TYPE OF OFFENCE[S] COMMITTED ON BAIL (64) FULL BAIL APPLICATION.

The majority of variables (1)-(64) above were independent variables, but (27)-(28), (30), and (32) were dependent variables. During the early stages of the research, it became apparent that there was some overlap between the first three of these, but after further

consideration, (27) BAIL REFUSED was nominated as the main dependent variable in the analysis. Analysis of the fourth variable, (32) TYPE OF BAIL GRANTED [CONDITIONAL OR UNCONDITIONAL] was not addressed in the pilot survey (see Chapter 10).

Main findings

Out of 146 males and 25 females in the final sample in the pilot bail survey (Table 6.2) just over three-quarters were aged under 35 years: 39 and 38 per cent were aged 15-25 and 26-35 years respectively. In keeping with preliminary testing of the discrimination hypothesis, the focus of the analysis of the pilot study data was on the bail/remand decision as between black and white defendants. Bivariate analysis was carried out by means of the crosstabulation statistical procedure to determine the relationship between the main dependent variable, BAIL REFUSED, and RACE as shown in Table 6.3. Out of all defendants, 85 per cent were male (Table 6.2).

Just over a fifth (22 per cent) of all defendants were refused bail, and 14 per cent more black defendants were refused bail than white defendants. The chi-square statistical test shows that this difference was statistically significant (Table 6.3). Causal relationships cannot be identified by bivariate analyses which limits findings to a description of an association between two variables except where the extent of the association is measured by various indexes, in addition to the statistical tests of the null hypothesis of independence measured by chi-square. However, there are limitations in chi-square tests, for example, they are affected by sample size. The Phi adjustment ('p' in the tables) measures the extent of the association between two variables on a range of 0 to 1, where 0 equals no association and 1 equals a perfect association (Nie, 1975; Norusis, 1987).

Table 6.3: Pilot bail survey: decision on bail by race

	Bail decision								
	Bail granted			Bail refused			Totals		
	Race	Col%	Row%		Col%	Row%		Col%	Row%
Black	44	(32.8)	(69.8)	19	(51.4)	(30.2)	63	(36.8)	(100)
White	90	(67.2)	(83.3)	18	(48.6)	(16.7)	108	(63.2)	(100)
Totals	134	(100)	(78.4)	37	(100)	(21.6)	171	(100)	(100)

Chi-square= 4.72 (df=1, p=0.039)

On the basis of the bivariate analysis almost twice as many black defendants were remanded in custody as compared to white, and *the difference was statistically significant*. Although other relevant variables were not taken into account, the main findings from the analysis of the pilot bail survey data to some extent supported the discrimination hypothesis, save that the 'comparability' aspect was not explored. These figures *raised the presumption of discriminatory practice on the grounds of 'race' in the bail system*, but given the small size of the sample and limited range of statistical techniques, without further analysis this could not be considered conclusive. A multivariate approach to the analysis would be needed in the final study which employed more sophisticated statistical techniques to control for other influential variables in order to determine whether 'race' could be isolated as an important variable in the bail decision-making process.

The hypothesis on bail conditions could not be tested in the pilot bail survey because the data was not sufficiently complete. Also only 14 white female defendants were observed in the pilot bail survey of which 2 (14 per cent) were remanded in custody, while there were 11 black females of which 4 (36 per cent) were remanded in custody. Therefore, the hypothesis on female defendants precluded satisfactory testing by an analysis of the pilot bail survey data because the number of females in the sample was so small. Similarly, if the number of females in the final study was small they would not be included in the analysis. The disparity hypothesis could not be tested in the pilot survey since the data was from a single court. Consideration was given to the question of an appropriate court to be compared with Highbury. Haringey Magistrates' Court sitting at Highgate ('Haringey') was identified as an appropriate court for the comparative analysis in the final study (see below).

In terms of the qualitative input to the pilot study, it is acknowledged that no interviews were actually carried out. However, consideration was given to those that should be interviewed for the final study and the development of contacts for this purpose

was continuous, especially with the probation service. During the course of the pilot study, the researcher often sat in the court duty team's room in the Highbury Probation Department, and was able to talk to probation officers informally. It was made known that in the final study the researcher hoped to conduct interviews with members of the probation staff. Assurance was given that the probation service would co-operate. During this period much was learnt about various background details of the court and the probation service, and the groundwork was completed to enable the final study to progress.

Given the paucity of previous research on bail and 'race', overall, the pilot study confirmed that further research in this area was necessary to elucidate whether 'race' was a factor which influences court decision-making on bail, and that such research could be viable in terms of access, methodology and feasibility of testing the hypotheses set out above. The limited statistical analysis of the pilot bail survey data suggested that *black defendants were remanded in custody at a higher rate than white defendants*, but this finding did not take into account other variables besides 'race' which may be influential factors in the remand decision.

Therefore, the quantitative research in the final study would necessitate the use of a type of statistical analysis which would take all relevant variables into account such as that employed in a multivariate approach by means of logistic regression. However, given the inherent drawbacks of quantitative research, the analysis of qualitative data from interviews with a range of informants involved in the bail process would be essential in trying to understand the significance of 'race' in bail decision-making. Accordingly, the final study on bail was undertaken for the purposes of such research, the aims and methodology of which are described in the following sections.

The final study: research aims and methods

Following an examination of previous research and consideration of the process and findings of the pilot study, the approach for the final study consisted of quantitative and qualitative research as set out below.

Aims of the research and selection of courts

One main aim of the research was to examine issues concerning black people and criminal justice with particular reference to issues concerning bail, and to test the hypotheses set out in the previous section by means of quantitative and qualitative methods. The other main aim of the research was to examine the nature and extent of racism in the criminal justice system and to develop theoretical perspectives on the criminalization of black people.

The aim of the quantitative research was to determine whether 'race' is an important variable in the remand decision (see Chapters 7 and 8), and in the imposition of bail conditions where bail is granted (see Chapter 10). If the proportion of female defendants in the sample was sufficiently large, differences in terms of 'race' *and* sex would also be explored. Unlike the pilot study which focused on only one magistrates' court, the final study would include comparative analysis of two magistrates' courts. It was anticipated that the combined data from both courts would allow for a better statistical analysis on a larger sample. The quantitative research would focus on a multivariate approach to the analysis of the data in order to examine the probability of defendants being refused bail on first appearance in court in the current proceedings or of being remanded in custody on a subsequent appearance and 'race' when all other variables which have an effect on the bail decision are controlled for. This would involve building a model using several variables in order to explain the variance of remand in custody rates. The contribution of each predictor variable to being remanded in custody, including 'race', would be assessed with

the effects of the other variables on remand in custody rates being held constant. This would also involve the construction of a 'Total Probability of Remand in Custody Score' (see Chapter 8; see also Hood: 1992: 253–63, 68–75).

The aim of the qualitative research was to try to reach an understanding of issues of bail and 'race', and also of wider issues of 'race' and criminal justice from an analysis of data from a representative sample of informants (see Chapters 9 and 10). Bearing in mind the experience of the pilot study and that of the ongoing bail survey, questions were formulated which were designed to elicit such views. Thus the role of the qualitative research was to provide a more rounded picture on bail and 'race' than could be provided by quantitative research. An analysis of officials' and defendants' perceptions of these issues was to be aimed at a comparative overview rather than a survey of black experiences such as NACRO (1991). In keeping with the naturalistic element of qualitative methods, the interviews would be carried out in the informants' own surroundings. It was also anticipated that the qualitative analysis would complement the findings of the quantitative analysis, and supplement relevant factors which could not be covered in the latter. Where appropriate, similarities and differences between the qualitative and quantitative analyses are noted in Chapter 9.

Highbury was chosen as one suitable court for the reasons set out in the previous section, and because access difficulties had already been largely overcome in the pilot study which would facilitate carrying out the final study. However, during the pilot bail survey where observations were made for the collection of data in three courts at Highbury (servicing parts of the London boroughs of Islington, Camden and Hackney), it was found that the highest proportion of black defendants appeared before Court 2 which serviced Stoke Newington, in the London Borough of Hackney. The Census 1991 figures confirmed that Hackney did have a higher proportion of residents from black and minority ethnic groups than Islington: 33.6 per cent of Hackney residents were from minority ethnic

groups, of which 22.0 per cent were black, 6.3 per cent were South Asian, and 5.3 per cent were Chinese and Other, as compared to Islington where 18.7 per cent were from minority ethnic groups, including 10.5 per cent black, 3.5 per cent South Asian and 4.7 Chinese and Other (Office for National Statistics, 1991). Accordingly all observations for the final study at Highbury would be carried out in Court 2.

For the purposes of the comparative analysis, Haringey was chosen as the other court for the final survey, since it serviced Tottenham in the London Borough of Haringey, another inner city area in North London; and, similar to Highbury, could provide a representative sample of defendants including a high proportion of black defendants. The Census 1991 figures also showed that although the overall proportion of minority ethnic groups and the black group in Haringey was smaller than in Hackney, the difference in both cases only amounted to just under 5 per cent: there were 28.9 per cent residents from minority ethnic groups in Haringey, of which 17.2 per cent were black, 5.7 per cent were South Asian, and 6 per cent were Chinese and Other (Office for National Statistics, 1991). These figures suggested that a comparison of Haringey (servicing Tottenham) and Court 2 (servicing Hackney) at Highbury would be more appropriate than a comparison of the former with the court at Highbury which serviced Islington. This was because the difference between the overall proportion of minority ethnic groups and the black group as between Hackney and Haringey (4.7 and 4.8 respectively) was less than between Haringey and Islington (10.2 and 6.7 per cent respectively).

Unlike Highbury, Haringey does not have a special court duty team but cover is provided by a rota of officers from the Middlesex Probation Service. It was anticipated that there may be more problems of access at Haringey than Highbury for two reasons: there was no bail information scheme, and the researcher was not known to the probation service. However, both the probation staff, and the chief clerk to the justices proved to be very co-operative in relation to the bail survey, and in terms of access to informants.

Quantitative methodology

The value of quantitative research lies in its 'scientific' approach which enables hypotheses to be tested. In addition to providing the means for the accurate collection of data, and for a description and analysis of such data, it also allows for the 'objective' measurement of the features of the research area, and the effects of independent variables on a dependent variable by means of statistical analyses and tests. However, as Jupp has pointed out, the validity of statistical measures remain contested although the quantitative tradition continues to be influential (Jupp, 1996: 14). In particular, the drawback of quantitative research is that statistical analyses may be open to criticism for being unreliable if the techniques of measurement and/or analysis are faulty and/or their interpretation is unduly selective or biased.

The strategies chosen for the final study in relation to the quantitative research were as follows:

- 1 to carry out a bail survey at two north London magistrates' courts, Highbury and Haringey, whereby information would be collected on a standard form during the researcher's observations in court;
- 2 to ensure that the sample would be larger than that of the pilot survey and include a sizable proportion of black defendants in order to allow for a better analysis;
- 3 to collect data from secondary sources where relevant on defendants (for example, from probation officers, lawyers and court clerks) and on demographic details on the areas (from the Census 1991) in which the courts were situated;
- 4 to record the information collected from the bail surveys and relevant secondary sources on a suitable computer database;
- 5 to transfer the data into an appropriate format which would enable analysis by means of a suitable computer program for multivariate analysis on the data from each court and on the combined data;
- 6 to carry out a comparative statistical analysis of the data which could help to identify a particular court's idiosyncrasies or help to highlight any significant trends; this is consistent with Hood's (1992) study on the effects of 'race' on sentencing where a comparative perspective was considered to be essential to an effective research design (Hood, 1992: 28);
- 7 to test the hypotheses on bail set out above by the findings of the bail surveys.

Qualitative methodology

In contrast to quantitative methodology which is closely associated with seeking 'to explain crime in causal terms', qualitative methodology is closely associated with ethnography, an approach which 'seeks to capture the ways in which individuals, and categories of individuals, make sense of the world and how subsequent actions are grounded in such interpretations' (Jupp, 1996: 14). Thus the role of qualitative methodology involves:

A commitment to explanation-by-understanding rather than explanation in causal terms and also to the viewpoint that the world is socially constructed.

(Jupp, 1996: 14)

Given the aim of this research set out above, the incorporation of such an approach in this study on bail was essential.

While the bail surveys, which formed the basis of the quantitative research in this study, were conducted in a manner that was separate and detached from the cases observed and recorded, the interviews, which formed the basis of the qualitative analysis, were conducted in a manner which allowed the researcher to 'get close to the data' (see Filstead, 1970: 6). In particular, case studies are valuable because they facilitate in-depth work on the research area (Neuman, 1994; see also Jefferson, 1997a). Essentially, the quantitative researcher remains "'outside" the area of study' using 'scientific' measures with the aim of describing and predicting 'the behaviour of individuals and groups by similar means to those of the physical sciences' (Sapsford, 1996: 174).

In contrast to quantitative methodology's 'objective' approach, the advantage of qualitative methodology is that it allows for a more 'subjective' approach reflecting a naturalistic perspective. However, the qualitative researcher must be aware of his/her impact on the informants during the interviews and must try to remain detached so that the

data collected is not subjected to any undue influence. Similarly, when the data is analysed, the researcher should guard against biased interpretation of the data. Moreover, he/she should be sensitive to the possibility that some accounts may be exaggerated or incomplete, particularly where the subject-matter is controversial or of an emotive nature. For example, as Hood has pointed out, it is necessary to recognise that 'it may be very difficult to elicit information relating to race in a formal interview' (Hood, 1992)

As a black person, the researcher in this study had some personal and political awareness of racism which facilitated an understanding of issues relating to 'race' and criminal justice, and a meaningful interpretation of the qualitative data. As a black *woman*, the researcher possibly may not have encountered as much suspicion and hostility from informants as a black *man* may have been faced with. Both of these factors, as well as the researcher's legal background, could have helped the researcher to elicit more far-reaching views from informants and to understand the data more than may otherwise have been possible.

The strategies chosen for the final study in relation to the qualitative research were as follows:

- 1 to carry out interviews with a representative sample of key persons involved in the bail system such as the police, the CPS, magistrates, court clerks, lawyers, and probation service staff;
- 2 to carry out interviews with a representative sample of a black defendants observed during the course of the bail survey;
- 3 to carry out case studies on black defendants observed in the bail survey (which would involve 'following through' the progress of cases);
- 4 to collect data from secondary sources where relevant on defendants (for example, from probation officers, lawyers and court clerks) where relevant;
- 5 to isolate common themes arising out of the interviews and case studies on bail and other relevant issues in the criminal justice process;
- 6 to complement and supplement the findings of the quantitative analysis and to add a wider perspective to and understanding of the research areas.

Table 6.4: Highbury defendants by sample group and race

	Sample group									
	Not in main sample		Main sample		Driving only		Sentenced only		Totals	
Race		Col%		Col%		Col%		Col%		Col%
Black	0	0	138	(48.4)	21	(44.7)	11	(31.4)	170	(46.0)
White	1	(33.3)	147	(51.6)	26	(55.3)	24	(68.6)	198	(53.5)
Asian	2	(66.7)	0	-	0	-	0	-	2	(0.5)
Totals	3	(100.0)	285	(100.0)	47	(100.0)	35	(100.0)	370	(100.0)

Table 6.5: Highbury defendants in the main sample by sex and race

	Main sample					
	Males		Females		Totals	
Race		Col%		Col%		Col%
Black	128	(49.4)	10	(38.5)	138	(48.4)
White	131	(50.6)	16	(61.5)	147	(51.6)
Asian	0	-	0	-	0	-
Totals	259	(100.0)	26	(100.0)	285	(100.0)

Table 6.6: Haringey defendants by sample group and race

	Sample group									
	Not in main sample		Main sample		Driving only		Sentenced only		Totals	
Race		Col%		Col%		Col%		Col%		Col%
Black	0		135	(48.7)	9	(37.5)	5	(21.7)	149	(44.9)
White	2	(25.0)	142	(51.3)	15	(62.5)	18	(78.3)	177	(53.3)
Asian	6	(75.0)	0	-	0	-	0	-	6	-
Totals	8	(100.0)	277	(100.0)	24	(100.0)	23	(100.0)	332	(100.0)

Table 6.7: Haringey defendants in the main sample by sex and race

	Main sample					
	Males		Females		Totals	
Race		Col%		Col%		Col%
Black	125	(50.4)	10	(34.5)	135	(48.7)
White	123	(49.6)	19	(65.5)	142	(51.3)
Asian	0	-	0	-	0	-
Totals	248	(100.0)	29	(100.0)	277	(100.0)

The Bail Surveys

The bail survey was carried out at Highbury between 11 December 1991 and 7 July 1992, and consisted of approximately 97 hours of observation over 56 sessions. At Haringey, the bail survey was carried out between 10 December 1991 and 20 August 1992 and consisted of approximately 62 hours of observation over 36 sessions. The researcher usually attended the former court on Mondays and Tuesdays, and the latter on Thursdays and Fridays. This enabled the progress of many cases to be 'followed-through' because cases tended to be remanded for hearing on a future date on the same day of the week as the original hearing. On the basis of experience gained from the pilot study, the original 'Court Bail Survey' form (Appendix 2) was adapted for the final study (see Appendix 6).

Access to courts

Access to Highbury was described in the previous section. In relation to Haringey, a letter was written to the chief clerk to the justices outlining the research proposal and requesting permission to sit in the body of the court during the bail survey. A prompt reply agreed to the request and instructed the researcher to sit in seating allocated to the probation service during observation sessions. In the early stages of the bail survey, many informal talks took place with various probation officers, with whom the researcher regularly sat next to in court, however, a formal letter was not written to the MPS. A copy of the court list was collected from the general office prior to observation sessions.

Sampling

At Highbury the bail survey was carried out in Court 2 (servicing Hackney) as described in the previous section. At Haringey it was carried out in Court 1 (servicing Tottenham), the main court, or in Court 2 when Court 1 cases were transferred to this court on the few occasions when the latter was allocated for licensing matters only. The target

figure for the sample at each court was 250 males to be equally divided between black and white defendants. It was anticipated that this sample size would be large enough to permit reliable statistical inferences to be drawn on a representative sample of defendants. No similar target number was set for females since the pilot study and previous studies revealed that the number of female defendants appearing before the courts was small, and that any results would be statistically insignificant.

By means of the variable (108) SAMPLE CATEGORY (see next sub-section) the original sample was broken down into four categories:

- i) 'not in the main sample': Asians who were excluded from the main sample because in the pilot survey it was found that very few appeared before the court; and defendants where offences had been allegedly committed 'on the run' since such defendants were already in custody bail issues would not be considered by the court;
- ii) 'main sample': all defendants who were not Asian, not 'on the run'; not charged solely with driving offences, or not merely sentenced by the court and bail issues were not involved or were not revealed;
- iii) 'driving only': cases where defendants were charged only with driving offences;
- iv) 'sentenced only': cases (excluding 'driving only') where defendants were merely sentenced by the court.

At Highbury, out of a total of 370 defendants (males and females), 285 (77 per cent) fell in the main sample group (Table 6.4). Out of a total of 285 defendants in the main sample group, only 26 (9 per cent) were females (Table 6.5) which was even smaller than the proportion of females in the pilot bail survey (Table 6.2). Since the proportion of females was small, as had been decided after the pilot bail survey, they were excluded from the analysis. This left 259 males, almost equally divided in terms of 'race', in the main sample group at Highbury which met the target figure of 250 (Table 6.5).

At Haringey, out of a total of 332 defendants (males and females), 277 (83 per cent) fell in the main sample group (Table 6.6). Out of a total of 277 defendants in the main sample group, only 29 (11 per cent) were females. After excluding females for the reasons

stated above, this left 248 males, almost equally divided in terms of 'race', in the main sample group at Haringey which was slightly under the target figure of 250 (Table 6.7).

In keeping with the quantitative research strategies set out in the previous section, the statistical analysis would involve a comparative analysis of the data from each court, in addition to an analysis of the combined data from both courts. It was anticipated that the latter would allow for better statistical analysis on a large sample with a sizeable proportion of black defendants. When the bail survey in the final study was completed, it was felt that this would be the case since the total number of males in the combined sample amounted to 507 defendants (259 at Highbury and 248 at Haringey) (Tables 6.5, 6.7), after excluding various categories of cases as described above from the original sample of 702 defendants (Tables 6.4, 6.6). Furthermore, the target proportion of about 50 per cent for black defendants was met in the main sample groups at both courts, giving a combined total of 253 (49.9 per cent) black defendants out of a total of 507.

However, it was also necessary to exclude from the multivariate analysis a further 44 cases where key variables were missing from the information supplied by the court, which reduced the sample in the final study to 463 defendants almost equally divided in terms of 'race' (see Chapter 7).

Developing the variables

After the experience gained from the pilot study, consideration was given to how the variables could be further developed to record information relevant to the bail/remand decision. This gave rise to the addition of some variables, and the substitution of one existing variable. The new variable BAIL REFUSED ON FIRST APPEARANCE replaced (19) FIRST APPEARANCE which merely recorded whether or not the case was observed on the defendant's first appearance before the court in the current proceedings. BAIL REFUSED ON FIRST APPEARANCE became a dependent variable in addition to

the main dependent variable BAIL REFUSED (subsequently named REMANDED IN CUSTODY which took into account the court's decision on bail throughout the period during which the case was observed).

The total number of variables was initially expanded from 64 in the pilot bail survey to 108 in the bail survey in final study as follows:

- (65) DETAILS IF BLACK; and (66) DETAILS IF WHITE: to show ethnic origin (where known) of defendants previously only shown as black or white;
- (67)–(71) CHARGES WITHDRAWN 1–5: an additional 5 charges withdrawn could be recorded;
- (72)–(86) BAIL CONDITIONS VARIED BY MAGISTRATES;
- (87)–(101) BAIL CONDITIONS IMPOSED/VARIED BY CROWN COURT;
- (102) TIME SPENT IN CUSTODY DURING REMAND PERIOD;
- (103) WHETHER DISPOSAL OF CASE KNOWN;
- (104)–(105) TYPE OF DISPOSAL WHERE KNOWN;
- (106) RATING FOR CHARGE(S) WITHDRAWN;
- (107) TOTAL RATING FOR CHARGES PLUS CHARGES WITHDRAWN;
- (108) SAMPLE CATEGORY (see previous sub-section).

When the collection of the data was completed, consideration was again given to the development of relevant variables, following which the number of variables was expanded from 108 to 122:

- (109) AGE GROUP: defendants' ages were divided into 11 age groups: similar to the categorisation in Northumbria Police (1991) (see Appendix 7);
- (110)–(114) CHARGE RANK 1–5: values were originally divided between 99 General Offences and 38 Driving Offences. However, for the purpose of analysis charges and charges withdrawn were divided into smaller groups, and so initially 23 groups were formed by ranking charges according to seriousness of offence in relation to maximum sentence;
- (116)–(120) CHARGE WITHDRAWN RANK 1–5: as for (110)–(114)
- (121) MAIN PREVIOUS CONVICTION RANK: to show the seriousness of the main previous conviction known where crimes were grouped in a similar way as described in relation to CHARGE RANK 1–5;
- (122) CASE NUMBER: a case number for each defendant was allotted so that defendants' names were not recorded in the database in keeping with the commitment to confidentiality.

After implementing these changes, the bail survey in the final study consisted of 122 variables recorded on a database by the Minitab computer program. SPSS-X was identified as a suitable computer program for the purposes of the multivariate analysis. When the bail survey was completed the information was transferred to a database created

by means of this program. The number of variables recorded on the new database was significantly reduced (see Appendix 7). Although some information collected was not used in the quantitative analysis, it was important to ensure at the outset that as much information as possible was gathered on each case, and some of the details were useful in relation to the qualitative analysis (see Chapters 9 and 10). The main changes were:

- Initially (6) ACCOMMODATION was not included because in the majority of cases whether or not the defendant had a fixed address or was of 'no fixed abode' (NFA) was not raised in open court. It was later included because relevant information was also obtained from an examination of the court lists which showed defendants' addresses or whether they were said to be of NFA.
- Since all the cases in the sample were males, (3) SEX was dropped from the new database.
- Some variables such as (65) DETAILS IF BLACK; and, (66) DETAILS IF WHITE were dropped because the data were too incomplete to allow for a meaningful statistical analysis.
- Some variables had too many value labels which produced very small numbers in some of the groups, so these were also dropped from the new database. Where such variables *were* retained for analysis, they were recoded so as to produce fewer categories and larger numbers in those categories.
- The method of ranking charges into 23 offence groups instead of recording the individual charge for each case still proved to be unsatisfactory owing to the small number of cases in each group, therefore, it was decided to consider only the *most serious* charge and charge withdrawn (if any) and further reduce the groups to 13 offence groups as shown in the following sub-section. This followed Hood's (1992) 'Grouping of crimes' where offences were categorised into 12 groups (see Hood, 1992: 70-1; Appendix 4). This corresponds to offence categories 1-12 in this research on bail.
- Initially an additional thirteenth category, 'Minor driving offences', was created, but this and the sixth category, 'Reckless driving', were subsequently excluded from the analysis following the exclusion of 'driving only' cases from the sample (see below and Tables 6.3, 6.4). Thus CHARGE RANK 1-5 and CHARGE WITHDRAWN RANK 1-5 were dropped and replaced with MOST SERIOUS CHARGE, and MOST SERIOUS CHARGE WITHDRAWN.
- Although only the most serious charge and charge withdrawn (if any) were included in the new database the overall seriousness of charges and charges withdrawn involved was recorded by the variables RATING FOR CHARGE(S) and RATING FOR CHARGE(S) WITHDRAWN which showed the total rating for charges in relation to sentence (see Appendix 3). For example, where a black male, aged 27, at Highbury was charged with Assault to resist apprehension (rating 100), Burglary with intent (rating 600), Receiving stolen goods (rating 600) and Drugs – possession of a Class A drug [crack cocaine](rating 350) was recorded under RATING FOR CHARGES as 1650, with Burglary as the MOST SERIOUS CHARGE (offence

group 8). Other burglaries and theft, and Fraudulent use of excise licence was recorded under RATING FOR CHARGES WITHDRAWN as 100, with this offence as the MOST SERIOUS CHARGE WITHDRAWN: offence group 10: Fraud/Receiving (Case no. 10 Highbury).

- Thus rating for charges and charges withdrawn (if any) were kept separate in the new database, so (107) TOTAL RATING FOR CHARGES PLUS CHARGES WITHDRAWN was not retained. The following 45 variables: (39)-(53) BAIL CONDITION[S] IMPOSED, (72)-(86) BAIL CONDITIONS VARIED BY MAGISTRATES, and (87)-(101) BAIL CONDITIONS IMPOSED/VARIED BY CROWN COURT were collapsed into the single dependent variable SEVERITY OF BAIL CONDITIONS.

Therefore, the number of variables analysed from the data transferred from the Minitab database was eventually reduced to 20 as described in the following sub-section.

Variables analysed

In addition to the original 20 variables derived from the original database, an extra variable, PSYCHIATRIC CONDITION, was included when it was revealed that the defendant's psychiatric condition had been brought to the attention of the court in several of the cases misclassified by the logistic regression model in the exploratory stage of the multivariate analysis. This was discovered following an examination of the bail survey forms for these misclassified cases where details about the relevant defendants' psychiatric condition was found to be recorded under 'Any other information' (see Chapter 7). Therefore, a total of 21 variables were analysed, and in the logistic regression output in the multivariate analysis, a 'Total Probability of Remand in Custody Score' was produced for each defendant in the sample. This was described in the output as the 'new variable TOTAL PROBABILITY OF REMAND IN CUSTODY SCORE' (see Appendix 7 and Chapter 8)

The variable names (in alphabetical order) and value labels for the new database on which the multivariate analysis was undertaken are listed in Appendix 7. The majority were independent variables. The main dependent variable was REMANDED IN CUSTODY, the other being BAIL REFUSED ON FIRST APPEARANCE. TYPE OF

BAIL GRANTED, and SEVERITY RATING OF BAIL CONDITIONS were also dependent variables. Following the development of the variables as set out above, the analysis of the new database could proceed (see Chapters 7, 8 and 10).

The Interviews

The qualitative part of this research was mainly derived from data collected from 17 tape-recorded interviews which were semi-structured. An interview schedule was prepared prior to each interview (Appendix 8) which formed the basis of questions asked at the interview, but more general conversation was developed beyond these. The data from the informants were analysed and themes were drawn out as set out in Chapters 9 and 10. Case studies on black defendants are also included in these chapters to illustrate various aspects of apparent differential treatment which involved 'following through' the progress of the case by contacting probation officers and/or solicitors for details not given in open court. As noted above, the qualitative research aimed for a comparative overview of officials' and defendants' perceptions of 'race' and criminal justice with particular reference to bail and remand in order to try to reach an understanding of these areas.

Court decision-making on bail is only part of the criminal justice process which is intrinsically linked with other procedures and practices, and the criminalization process. This is illustrated to some extent in the quantitative research (for example, the interaction between the defendant's police bail status and court bail), and is taken further in the qualitative research. It was anticipated that this analysis would raise issues about perceived discriminatory practices in the courts in relation to bail and other aspects of the criminal justice process, and that the views of black defendants could be compared to those of workers in criminal justice agencies and legal practitioners. It was also envisaged that these views would provide useful illustrations of the theoretical propositions set out in Chapter 11.

Access to informants

At the outset it became apparent that problems of access to suitable informants could arise owing to the limitations of the researcher being based at the Open University rather than some 'official' institution such as the Home Office. Such difficulties had been experienced during the course of the pilot study when access to defendants' criminal histories from the Criminal Records Office was refused.

Previous research shows that gaining access to official records and potential informants is usually less problematic for researchers from the Home Office, or with Home Office or other official backing (Moxon, 1988; Hood, 1992). For example, in his research on 'race' and on sentencing, backing from the Lord Chancellor's Department enabled Hood, Director of the Centre for Criminological Research in the University of Oxford, to obtain access to full Crown Court files, police and probation records for each defendant in his sample of over 3,000 cases at 5 Crown Courts (see Hood, 1992: 30-1, 35). Nevertheless, personal contact with the Probation Departments at both courts during the course of the bail surveys, proved invaluable in securing access to criminal justice workers and defendants in this research on bail.

Sampling

Sampling was not random. In order for the informants to be representative of the various categories of persons in keeping with the research strategy, the original aim was to interview a senior police officer and CPS representative from the jurisdiction covering each court, as well as a stipendiary and lay justice, a court clerk, 4 lawyers (2 solicitors and 2 barristers), 3 probation officers, and 5 black defendants from each court. Save for the latter, at least one informant in each category should be black. It is acknowledged that difficulties encountered regarding access to proposed informants (such as the refusal of the chief court clerk at Highbury to allow access to magistrates and court clerks and the failure

of some prospective defendants to keep appointments for the interviews) resulted in the target number of informants not being met in any of these categories. However, a representative range of informants was eventually interviewed as described below.

In relation to the police, initial contact was with a Police Inspector at Islington Police Station who advised that a formal letter should be written to the Chief Superintendents of Police at Islington and also Tottenham Police Stations setting out details of the research and an outline of proposed questions. Contact was made by a Police Inspector, the police and community liaison officer at St. Anne's Police Station, Tottenham (servicing Haringey), who agreed to be interviewed as the police representative. A similar letter was sent to the CPS Headquarters. It was advised that contact should be made with the Branch Crown Prosecutor for the Highbury area. This was done and it was agreed that the interview could be held with the Assistant Crown Branch Prosecutor based at Highbury. Letters requesting an interview with a court clerk, a stipendiary magistrate and a lay justice were sent to the chief clerk and the clerk to the justices at Highbury and Haringey respectively. The request to the former was completely refused, but the latter agreed that an interview could be carried out with the chairperson to the lay justices with a court clerk in attendance.

It was decided that a black *and* a white solicitor should be interviewed who had a client in one of the bail survey samples and who frequented either court. The proposed informants were directly approached at court. Only one solicitor who had a client in the bail survey agreed to be interviewed, but the other had been observed at court on several occasions. The black solicitor was based in Tottenham (within the catchment area of Haringey), and the white solicitor was based in Stoke Newington (within the catchment area of Highbury) and acted on behalf of Highbury Case No. 171, a black defendant, who also agreed to be interviewed (see below). Since contact had not been made with any barrister who had appeared on behalf of any of the defendants in either sample, it was

decided to approach a black *and* a white barrister who had taken part in the panel of experts which had been formed in connection with the quantitative research in relation to bail conditions. Eventually the only barrister interviewed was one of the black male barristers. All three lawyers interviewed had been practising for more than five years and had heavy criminal caseloads with a large proportion of black clients.

It was decided to interview at least 3 probation officers – one of whom should be black – from each court. It was hoped that the bail information officer could be interviewed at Highbury, and at least one senior probation officer from either court. A letter outlining the details of the research and formal request to interview these proposed informants was sent to the senior probation officers at Highbury and Haringey. Arrangements were made so that interviews could be conducted with the assistant chief probation officer and the bail information officer at Highbury, and one black and one white probation officer from each court (at Highbury there was only one black probation officer).

In relation to the defendants, in order to coordinate the qualitative research with the quantitative research, five prospective informants at each court were selected from cases in the bail surveys. Letters outlining the research and a copy of an outline of proposed questions were sent to the probation service (since all were known to the probation service) and also to the defendants' solicitors. It was agreed that defendants would not be identified in any research findings by their real names. Defendants were supplied with a copy of the interview schedule (Appendix 8). Several defendants did not keep appointments arranged for the interviews, and eventually it was found possible to carry out interviews with only two black male defendants from each court. It was regrettable that in spite of much effort it was not possible to interview any black female defendants.

All defendants interviewed had been remanded in custody at some time during the course of the bail survey. All were aged under 26 years. This was felt to be appropriate since at both courts in the quantitative analysis it was found that a higher proportion of

black defendants aged under 26 years had been remanded in custody than white defendants (see Chapter 7, Table 7.6). In terms of charges, one black defendant's (Highbury Case no 19) main charge was in the Serious violence and other grave crimes category, and the remaining four defendants' main charge was in the Blackmail/Robbery/Kidnapping offence group (Highbury Case no. 116, and Haringey Case nos. 171 and 172). Again this was felt to be representative since in the quantitative analysis it was found that almost 40 per cent of all defendants charged with offences in a combination of these offence groups were found to have been remanded in custody.

To summarise, a total of 17 informants were interviewed as follows: a police inspector (white, Haringey), an assistant crown prosecutor (Asian, Highbury), the chairperson to the lay justices and court clerk (white, Haringey), two solicitors (white, Highbury; black, Haringey), one barrister (black), six probation officers (3 white and 1 black, Highbury; 1 white and 1 black, Haringey); and four defendants (2 black, Highbury; 2 black, Haringey).

Conducting and transcribing the interviews

Defendants were sent a copy of an interview schedule (Appendix 8) a few days before the interviews took place and assured that their names would not appear in the research when it was written up. The remaining informants were interviewed in accordance with an interview schedule presented at the interview. All interviews were tape-recorded so that the accuracy of informants' data could be checked when transcribed. In order to enhance the naturalistic quality of the interviews, informants were interviewed at their residence or workplace so that they would feel comfortable in a familiar environment.

The interviews took about 40 minutes each to complete and were carried out between 5 May 1992 and 18 May 1993. Two women transcribed them. One was white and had

successfully completed Solicitors' Finals examinations, and the other was a black legal secretary in a solicitors' firm in Islington. These transcribers were chosen because they had knowledge of the criminal law and would be able to recognise the nuances of various aspects of and references in the interview material. Without this background a certain value of the data could have been lost. The black transcriber, who was of African-Caribbean origin, had some familiarity with the language used by the defendants. This helped to enhance the naturalism of the data from the defendants all of which she transcribed.

The data from the transcriptions were examined and checked with the tape recordings. The results of the analysis of the qualitative research are set out in Chapters 9 and 10.

Part Three

Research Findings

Introduction

The results of this study are set out in Part Three: 'Research Findings'. Chapter 7 provides the results of an initial analysis of the combined quantitative data from the bail survey carried out at Highbury Corner Magistrates' Court and at Haringey Magistrates' Court. While providing an accurate description of the data, such an analysis is unable to fully test the discrimination hypothesis as set out in Chapter 6 since it relies on relatively simple statistical tests. However, this shortfall is redressed in Chapter 8 which employs more sophisticated statistical techniques. Chapter 7 also compares results from the separate courts and rates of remands in custody to the racial composition of the court areas and tests the disparity thesis.

Chapter 8 gives details of the measures of the independent and dependent variables and explains how multivariate analysis was used to try to determine whether or not the 'race' of the defendant was a variable which significantly effects the probability of a defendant being remanded in custody. This chapter then sets out findings from the 'logistic regression' statistical technique employed in the analysis in order to test the discrimination hypothesis and discusses the results.

Several themes on bail and criminal justice focusing on the position of black suspects and defendants drawn from the qualitative analysis are set out in Chapter 9. These are mainly derived from a series of semi-structured interviews with black defendants and various criminal justice officials as described in Chapter 6. The findings provide some insight on various issues relating to 'race' and bail/remand, and 'race' and other stages of the criminal justice process. Given the limited scope of statistical techniques, some aspects that could not be covered in the quantitative research are addressed in the qualitative analysis. However, in some instances it was possible to compare these findings with the quantitative results.

Findings from an analysis of both quantitative *and* qualitative data specifically on conditions of bail are set out and discussed in Chapter 10. The statistical analysis provides a detailed breakdown of defendants' bail outcomes during the period when cases in the survey were observed, and also of the 'severity rating' of defendants' bail conditions where conditional bail was imposed. The qualitative analysis helps to uncover the impact of individual bail conditions on defendants and identifies specific instances where the imposition of such conditions may be particularly problematic for black defendants.

Chapter 7

Initial Analysis on Remands in Custody

The continuing gap between the percentages of black and white people entering the criminal justice system (particularly prisons) observed both in North America and England and Wales, raises an old, but still very important question of whether the over-representation is the result of proportionately more black than white people committing offences or offences of a particular kind, or whether it is the result of racial bias in the administration of criminal justice.

(Mhlanga, 1997: xvi)

Introduction

This chapter addresses descriptive statistics in relation to an initial data analysis of the combined sample and also compares the samples from the separate courts. One aim of such analysis was to ‘clarify the structure of the data’, provide a ‘descriptive summary’ and to help develop ideas for more sophisticated types of analysis (Chatfield, 1988: 22). Another aim was to undertake preliminary testing of the discrimination and disparity hypotheses on remand decisions as set out in Chapter 6.

Some inferential statistics, which enable generalizations to be made from representative samples, are also addressed. This is done by using tests of statistical significance which ‘assess whether the difference between sample groups is sufficiently great, given the sample size, to assume that this difference also exists in the population’ (Rose and Sullivan, 1996: 240, 176). The chi-square statistical test is used in relation to crosstabulations of two or three variables. It is important to note that such analyses whilst interesting in themselves only describe the association between two or three variables and are unable to identify causal relationships. This is because contingency tables do not allow for the quantification or testing of that relationship save where various indices that measure the extent of the association are also made together with statistical tests (Norusis, 1987).

In this research the computer Statistical Package for Social Sciences ('SPSS') 'crosstabulation' procedure in conjunction with the 'chi-square' subcommand produced a significance level in the output immediately following a table cross-tabulating 2 or more variables. Expected values are produced in table form. The chi-square test involves advancing a 'null hypothesis' which states that there is no relationship between the dependent and independent variables. This test is expressed 'in the form of being wrong in *rejecting* the null hypothesis, *i.e.* a small probability (P-value) of less than 5% means that there probably is a real difference between the groups in the population, and that we should reject the null hypothesis'. The 5 per cent level of statistical significance ($p < 0.05$), which is conventionally recognised as the outermost limit of statistical significance (Rose and Sullivan, 1996: 136, 169), is used in this research where results reaching statistical significance are specifically stated in the text. The chi-square output is read in conjunction with a chi-squared distribution table. The 'degrees of freedom' (df =number of rows in the table minus 1) is read off in the table against the output which is only statistically significant when greater than 5 per cent. If so, the variables are associated, and the higher the chi-square is above the 5 per cent reading, the stronger the association between the variables.

However, crosstabulations which reveal the effect of one variable on another (two-way or bivariate crosstabulation) and/or the effect of one variable on two other variables (three-way crosstabulation or multivariate analysis), do not take account of other variables which may influence the court's decision on bail. In order to fully reveal a 'race effect' or a discrimination supposition', the research design had to ensure that data on black defendants were analysed in conjunction with *comparable* white defendants. This required a multivariate approach involving the construction of a statistical model which took into account all variables that affected the bail decision (this is discussed in full in Chapter 8).

A total of 463 cases (233 from Highbury and 230 from Haringey) derived from the original data files form the basis of the statistical analyses in Chapters 7, 8 and 10. Not all of the cases in the original samples were used. A total of 239 (34 per cent) cases were excluded from the original 702 cases (see Chapter 6: Tables 6.4, 6.6) as follows:

- a) 55 female defendants were excluded owing to the small number in the original sample – this is consistent with Hood (1992) who considered only male defendants in his analyses;
- b) 8 Asian defendants were also excluded owing to the small number in the original sample – this is not consistent with Hood (1992) whose sample contained a high proportion of Asians;
- c) 3 cases where the ‘remand in custody’ decision was not applicable: where alleged offences were committed ‘on the run’ (since issues regarding bail did not arise because the defendants were immediately ordered to complete their custodial sentence); where defendants were remanded into police custody; or where the defendant had been remanded in custody by another court during the course of the proceedings at Highbury or Haringey;
- d) 71 cases where the only charge or the most serious charge was a driving offence;
- e) 58 cases where the defendant observed was sentenced by the court where no data in relation to bail was able to be collected;
- f) 44 cases where key variables were missing from information supplied by the court.

The remaining 463 (66 per cent) cases entered in the analysis were almost equally divided in terms of ‘race’: 232 (50.1 per cent) white defendants and 231 (49.9 per cent) black defendants.

Firstly, this chapter sets out preliminary findings on the combined sample in relation to statistically significant results from crosstabulations of the main dependent variable, REMANDED IN CUSTODY, with various independent variables. Secondly, findings on the combined sample from an initial analysis of crosstabulations of the main dependent variable, and another dependent variable, BAIL REFUSED ON FIRST APPEARANCE, by the independent variable, RACE, are addressed (see Chapter 6). Thirdly, an initial analysis of findings from Highbury and Haringey are compared. The means (averages) of

the independent variable, AGE, is also addressed. The following analysis provides an initial impression as to whether 'race' has any significant effect on the court's decision to grant bail.

Initial Analysis of the Combined Sample

At the outset of the analysis, the seriousness of the offence and if the offence was allegedly committed while the defendant was already on bail were identified as key factors in the remand decision. The variables MOST SERIOUS CHARGE, OFFENCE CHARGED COMMITTED WHILE ON BAIL, and RATING FOR CHARGES were *highly statistically significant* in the crosstabulations of all defendants in the combined data by REMANDED IN CUSTODY. Furthermore, NUMBER OF PREVIOUS CONVICTIONS, POLICE BAIL, ACCOMMODATION, and PSYCHIATRIC CONDITION were *statistically significant*, but in the first two there was a large proportion of missing values in the data, and in the last two only small numbers of defendants were identified as being of no fixed abode and as having their psychiatric condition brought to the attention of the court.

Dependent variables

There were two dependent variables in relation to the court's decision as to whether to remand the defendant in custody. The main dependent variable, REMANDED IN CUSTODY, takes into account the court's decision on bail throughout the period during which the case was observed. The other dependent variable, BAIL REFUSED ON FIRST APPEARANCE, solely concerns the court's decision at the defendant's *first* court appearance when the first bail application is usually made. The analysis began by using the SPSS 'crosstabulation' procedure in order to determine the relationship between these two dependent variables and RACE.

Table 7.1: Combined defendants: proportion remanded in custody by race (expected frequencies in italics)

	Race					
	Black		White		Totals	
	Col%	Row%	Col%	Row%	Col%	Row%
Remanded in custody						
Not remanded	178 <i>183.6</i>	(77.1) (48.4)	190 <i>183.4</i>	(81.9) (51.6)	368	(79.5)(100.0)
Remanded	53 <i>47.4</i>	(22.9) (55.8)	42 <i>47.6</i>	(18.1) (44.2)	95	(20.5)(100.0)
Totals	231(100.0)	(100.0)(100.0)	232	(100.0)(100.0)	463	(100.0)(100.0)

Chi-square=1.66 (df=1, p=0.197)

Table 7.2: Combined defendants: proportion refused bail on first appearance by race (expected frequencies in italics)

	Race					
	Black		White		Totals	
	Col%	Row%	Col%	Row%	Col%	Row%
Refused bail on first appearance						
Bail refused	51 <i>45.4</i>	(22.1) (56.0)	40 <i>45.6</i>	(17.2) (44.0)	91	(19.7)(100.0)
Bail granted	180 <i>185.6</i>	(77.9) (48.4)	192 <i>186.4</i>	(82.8) (51.6)	372	(80.3)(100.0)
Totals	231	(100.0)(100.0)	232	(100.0)(100.0)	463	(100.0)(100.0)

Chi-square=1.71 (df=1, p=0.190)

REMANDED IN CUSTODY AND BAIL REFUSED ON FIRST APPEARANCE

Black defendants were remanded in custody at a higher rate than white defendants. A total of 95 defendants, accounting for just over a fifth (21 per cent) of all defendants, and 5 per cent more black defendants than white defendants (which was higher than the expected frequency), were remanded in custody (Table 7.1). It is interesting to note that in Hood's (1992) study on sentencing and 'race' in 5 West Midlands *Crown Courts* (see Chapter 3) a similar difference was found in the higher proportion of black (26%) than white (20%) defendants who had been remanded without bail and subsequently sentenced to custody (Hood, 1992: 205).

Black defendants were refused bail on first appearance at a higher rate than white defendants. A fifth of all defendants, and 5 per cent more black defendants (which was higher than the expected frequency) than white defendants, were refused bail on first appearance (Table 7.2). Therefore, there was little change in the proportion of defendants remanded in custody throughout the period when the case was observed as compared to those initially refused bail on first appearance. This suggests that the decision at the first bail application was crucial in terms of the chances of being granted bail at all during the proceedings: only 5 per cent of all defendants were refused bail on first appearance and subsequently granted conditional bail (see Chapter 10, Table 10.1).

Relationship between dependent and independent variables

From the pilot study findings (see Chapter 6) and further exploratory crosstabulations, fifteen independent variables were identified in the database as bearing a relation to the main dependent variable, REMANDED IN CUSTODY, all of which are relevant to the other dependent variable, BAIL REFUSED ON FIRST APPEARANCE. These were: ACCOMMODATION, AGE, AGEGROUP, EMPLOYMENT, MOST

SERIOUS CHARGE, MOST SERIOUS CHARGE WITHDRAWN, NUMBER OF PREVIOUS CONVICTIONS, OFFENCE CHARGED COMMITTED WHILE ON BAIL, POLICE BAIL, PSYCHIATRIC CONDITION, RACE, RATING FOR CHARGES, RATING FOR CHARGES WITHDRAWN, RATING FOR PREVIOUS CONVICTIONS, and TYPE OF MAGISTRATE. Four of these: EMPLOYMENT, MOST SERIOUS CHARGE WITHDRAWN, RATING FOR CHARGES WITHDRAWN, and RATING FOR PREVIOUS CONVICTIONS are not addressed because the figures involved in crosstabulations of defendants remanded in custody by each of these variables by RACE were too small to warrant inclusion.

Save for the means on AGE, the analysis in this section is derived from tables involving the crosstabulation of defendants remanded in custody by each of the remaining 8 independent variables by RACE. These findings only represent 'slices' of the data and may only 'tell part of the story' in two or three dimensions (Chatfield, 1988: 37) since other possibly relevant variables, for example, MOST SERIOUS CHARGE and NUMBER OF PREVIOUS CONVICTIONS, are not controlled for. Nevertheless, such initial data analysis does provide a useful insight into the data, and this shortfall is remedied in Chapter 8 which uses a more sophisticated multivariate analysis.

The initial analysis only produced statistically significant results in relation to MOST SERIOUS CHARGE and RATING FOR CHARGES, in the crosstabulations of all defendants by RACE, *and* of defendants remanded in custody by RACE. The analysis of the remaining variables in terms of 'race' is, therefore, not conclusive, but it does provide a description of the data and highlights some differences found between the position of black and white defendants.

TYPE OF MAGISTRATE

Over half, 57 per cent, of all defendants appeared before lay justices on first appearance, but 4 per cent more black defendants than white defendants appeared before a stipendiary, the professionally-paid type of magistrate sometimes said to deal with more serious types of cases. Just over half of all defendants, 53 per cent, were refused bail on first appearance by lay justices, as compared to 47 per cent by stipendiaries (Appendix 9: Table 7.3).

There was little difference in the proportion of black defendants refused bail on first appearance in terms of the type of bench: only 2 per cent more black defendants were refused bail by a stipendiary than by justices, whereas for white defendants the difference was slightly greater at 5 per cent. Black defendants had a higher rate of refusal of bail on first appearance than white defendants before both types of benches: 6 per cent more black defendants were refused bail by justices, and 3 per cent more by stipendiaries (Appendix 9: Table 7.3).

POLICE BAIL

Just under half, 46 per cent, of all defendants were refused police bail *and* refused bail *on first appearance* out of 95 remanded in custody at some time during the case. 4 per cent more black defendants were refused police bail than white defendants but 9 per cent more white defendants than black were subsequently refused bail on first appearance. This suggests that white defendants were more likely to be refused bail on first appearance where police bail had been refused.

Overall, a greater proportion of defendants were remanded in custody who had previously been refused police bail, and the association between POLICE BAIL and REMANDED IN CUSTODY was *statistically significant*. This suggests that the risk of being remanded in custody is greater where police bail is refused.

Out of 119 defendants granted police bail, 6 per cent were remanded in custody, as compared to 43 per cent remanded in custody out of 102 refused police bail. This suggests that defendants were more likely to be remanded in custody where police bail had been refused. 10 per cent more white defendants than black defendants were remanded in custody where police bail had been refused (Appendix 9: Table 7.4). However, findings on police bail must be treated with caution because just under half of police bail decisions were unknown.

AGE AND AGEGROUP

The mean age for all defendants was 27.9 years: for white defendants it was 28.6 years, whereas for black defendants it was slightly younger at 27.3 years. For all defendants remanded in custody, the mean age was 26.5 years: for white defendants it was 27.3 years, whereas for black defendants it was again slightly younger at 25.9 years.

The majority of all defendants (79 per cent) were aged 18–20, 21–25, 26–30, and 31–35. The highest proportion (35 per cent) of all defendants with 9 per cent more black defendants, were aged 18–20; the second highest proportion (20 per cent) with 5 per cent more black defendants, were aged 26–30. Defendants aged under 13, 14–17, 18–20, and 21–25, together represented 51 per cent of the sample. Overall, 7 per cent more black defendants than white defendants were under 26 years.

Out of all defendants remanded in custody, 16 per cent more were under 26 than 26 and over. This suggests that younger defendants were more likely to be remanded in custody than older defendants. The position was more marked for black defendants than white: 9 per cent more black defendants under 26 were remanded in custody than those aged 26 and over, in contrast to only 2 per cent white defendants under 26 remanded in custody than those aged 26 and over. In the younger age group, 8 per cent more black defendants were remanded in custody than white, whereas in the older age group there was

little difference between the proportion of black and white defendants: just under 1 per cent more black defendants aged 26 and over were remanded in custody than white (Appendix 9: Table 7.5). This suggests that young black defendants were more likely to be remanded in custody than young white defendants and also older black and white defendants.

MOST SERIOUS CHARGE

The association between MOST SERIOUS CHARGE and REMANDED IN CUSTODY was *highly statistically significant*, although some small numbers in the results may have diminished the chi-square test. Three offence groups, (1) Serious violence and other grave crimes, (8) Household burglaries, and (9) Other burglaries/ Theft, shared the highest percentage, 21 per cent, of all defendants remanded in custody.

The association between MOST SERIOUS CHARGE and RACE was also *highly statistically significant*, indicating a strong relationship between these variables. This crosstabulation produced a table with 4 cells below 5, relating to the Sexual Offences and GBH s.20, which could diminish the chi-square test results. When these two offence groups were combined, the finding that the association between MOST SERIOUS CHARGE and RACE was *statistically significant* was confirmed. There were more black defendants than the expected frequency in the following offence groups: (1) Serious violence and other grave crimes, (2) Blackmail/ Robbery/ Kidnapping, (3) Supplying drugs, (4) Sexual offences (other than Rape), (5) GBH (s.20 unlawful wounding), (7) Public disorder, (8) Household burglaries, and (12) Other offences; whereas there were more white defendants than expected in the (9) Other burglaries/ Theft, (10) Fraud and handling, (11) Minor violence offence groups.

There was twice the proportion of black defendants as compared to white defendants in offence groups (1)-(3), together comprising 19 per cent of all defendants. Thus a larger

proportion of black defendants had the most serious charge in one of the three more serious offence groups. The greatest percentage difference in terms of 'race' occurred in the largest offence group, (9) Other burglaries/ Theft, comprising 22 per cent of all defendants, and 13 per cent more white defendants than black defendants. The number of white defendants was also much higher than the expected frequency. The second largest percentage difference in terms of 'race' occurred in offence group (2) Blackmail/ Robbery/ Kidnapping, comprising 6 per cent of all defendants, where there was 8 per cent more black defendants than white. The number of black defendants in this group was also much higher than the expected frequency. In offence groups (9)-(11), together comprising 44 per cent of all defendants, there was 1.5 times the proportion of white as compared to black defendants.

Out of defendants remanded in custody, almost two fifths (38 per cent) were in the offence groups (1)-(3). Just over two fifths (42 per cent) of all defendants were in (8) and (9) (both at 21 per cent). One fifth of all defendants were remanded in custody in the remaining offence groups in small numbers. This suggests that *the risk of being remanded in custody is higher where the seriousness of the offence is greater*. Notwithstanding some differences in the classification of offence groups, these findings are similar to Hood's (1992) findings on the 'remand status'.

More black defendants were remanded in custody than the expected frequency in offence groups (2), (3), (5), (7) and (8), whereas there were more white defendants than expected in groups (1), and (9)-(11). The largest proportion (22 per cent) of all defendants remanded in custody were in the most serious offence group, (1) Serious violence and other grave crimes, where 15 per cent more white defendants were remanded in custody than black defendants; 17 per cent of all defendants remanded in custody were in offence group (2) Blackmail/ Robbery/ Kidnapping. Although over twice the proportion of white defendants as black defendants were remanded in custody in this group, the number of

white defendants involved was small and below the expected frequency, whereas the number of black defendants was above the expected frequency and most marked out of all offence groups. The second largest proportion of all defendants was equally (both at 21 per cent) in offence groups (8) Household burglaries, and (9) Other burglaries/ Theft: 22 per cent more black defendants than white were remanded in custody in the former, in contrast to 5 per cent more white defendants than black in the latter, where the number of white defendants above the expected frequency was most marked out of all offence groups. This suggests that black defendants are at greater risk than white defendants of being remanded in custody where the most serious charge is in offence group (8) Household burglaries, whereas white defendants are at greater risk of being remanded in custody if the most serious charge is in offence group (9) Other burglaries/ Theft.

When MOST SERIOUS CHARGE was divided into only 4 main offence group: (a) Serious violence and other grave crimes/ GBH S.20, (b) Blackmail/ Robbery/ Kidnapping/ Supplying drugs/ Public disorder, (c) Household burglaries/ Fraud and handling/ Minor violence, and (d) Other burglaries/ Theft/ Sexual offences*/ Other offences, the association with RACE was *statistically significant* for all defendants as well as for those remanded in custody. Slightly more white defendants were remanded in custody than the expected frequency in offence group (a), and more in (d), whereas more black defendants were remanded in custody than expected in offence group (b), and slightly more in (c) (Appendix 9: Table 7.6):

- (a) in the Serious violence and other grave crimes/ GBH S.20 offence group: just over a fifth of all defendants, 22 per cent, and 12 per cent more white defendants were remanded in custody. This difference amounts to 27 per cent (12/44.0) or a 0.2 times greater probability of a white defendant than a black defendant being remanded in custody. This is equivalent to 127 white defendants as compared to 100 black defendants;
- (b) in the Blackmail/ Robbery/ Kidnapping/ Supplying drugs/ Public disorder offence group: just over a quarter of all defendants, 26 per cent, and 11 per cent more black defendants were remanded in custody. This difference amounts to a 97 per cent (11/11.3) or 1.0 times greater probability of black defendant than a white defendant

being remanded in custody. This is equivalent to 197 black defendants as compared to 100 white defendants;

- (c) in the Household burglaries/ Fraud and handling/ Minor violence offence group: just over a quarter of all defendants, 28 per cent, and 11 per cent black defendants were remanded in custody. This difference amounts to a 77 per cent (11/14.3) or a 0.8 times greater probability of a black defendant than a white defendant being remanded in custody. This is equivalent to 177 black defendants as compared to 100 white defendants; and,
- (d) In the Other burglaries/ Theft/ Sexual offences/ Other offences offence group: just over a fifth of all defendants, 22 per cent, and 6 per cent more black defendants were remanded in custody. This difference amounts to a 50 per cent (6/12.1) or a 0.5 times greater probability of a white defendant than a black defendant being remanded in custody. This is equivalent to 150 white defendants as compared to 100 black defendants.

Therefore, white defendants are *at greater risk of being remanded in custody* than black defendants where the most serious charge was Serious violence and other grave crimes, GBH S.20, Other burglaries, Theft, or Other offences. On further investigation of the data, out of the 11 black defendants remanded in custody whose most serious charge was either Blackmail, Robbery or Kidnapping referred to in (b) above, all were charged with Robbery except for one. Therefore, black defendants are *at much greater risk of being remanded in custody* than white defendants where the most serious charge was Robbery, Supplying drugs, Public disorder, Household burglary, Fraud and handling or Minor violence. These findings may suggest that magisterial discretion in relation to remand decisions can operate to the detriment of black defendants charged with such offences. Overall, they also confirm earlier indications that the relationship between 'race' and remands in custody is highly offence-specific.

RATING FOR CHARGES AND NUMBER OF CHARGES

The association between RATING FOR CHARGES and REMANDED IN CUSTODY was *highly associated and statistically significant*, indicating a strong relationship between the risk of being remanded in custody and the overall seriousness of

all charges. RATING FOR CHARGES and RACE were also *highly associated and statistically significant* for all defendants, and *statistically significant* for defendants remanded in custody. There was one and a half times more the proportion of black defendants than white defendants in the 601–7000 category which was much more than the expected frequency. Nearly three fifths (57 per cent) of white defendants as compared to just over three-quarters (79 per cent) of all black defendants remanded in custody were in the higher rating category, which was more than the expected frequency.

Out of all defendants remanded in custody, 31 per cent had a rating for charge(s) in the 1–600 rating category and there were 3 per cent more white defendants than black defendants. This difference amounts to a *33 per cent (2.6/8.0) or 0.3 times greater probability of a white defendant than a black defendant being remanded in custody* where all charges were rated in the less serious category of offences. This is equivalent to 133 white defendants as compared to 100 black defendants. This was in contrast to the position in the 601–7000 rating category, comprising 69 per cent of all defendants remanded in custody, where there were 6 per cent more black defendants. This difference amounts to a *16 per cent (6/38.7) or a 0.2 times greater probability of a black defendant than a white defendant being remanded in custody* where all charges were rated in the more serious category of offences. This is equivalent to 116 black defendants as compared to 100 white defendants (Appendix 9: Table 7.7). This suggests that black defendants are at greater risk of being remanded in custody than white defendants *when the overall seriousness of all charges is greater*.

It was further investigated as to whether a larger proportion of black defendants were charged with *more charges* than white defendants since this may also have had some bearing on the court's view on the overall seriousness of charges in terms of quantity. For the purposes of the analysis defendants were divided into two categories: those charged with only one charge *or more than one charge*.

Just over three fifths, 61 per cent, of all defendants remanded in custody were charged with *more than one charge*. This suggests that defendants charged with more than one charge were more likely to be remanded in custody than those with only one charge as might be expected. Overall, 8 per cent more black defendants than white defendants were charged with more than one charge. Out of defendants remanded in custody, 3 per cent more black defendants than white defendants were charged with more than one charge (Appendix 9: Table 7.8). Thus black defendants were more likely to be remanded in custody than white defendants where the overall *number* of charges was higher.

OFFENCE CHARGED COMMITTED WHILE ON BAIL

There was a strong relationship between OFFENCE CHARGED COMMITTED WHILE ON BAIL and REMANDED IN CUSTODY, which was *highly associated and statistically significant*. The majority of defendants, 82 per cent, had *not* allegedly committed the current offence while on bail. Although 12 per cent fewer defendants were remanded in custody who were alleged to have committed the current offence while on bail than those who were not, there was *a much larger number* than the expected frequency of the former.

2 per cent more white defendants than black defendants *had* allegedly committed the current offence while already on bail. Out of defendants remanded in custody, 11 per cent more black defendants than white were alleged to have committed the current offence on bail. This suggests that black defendants who are alleged to have committed the offence(s) while already on bail were more likely to be remanded in custody than white defendants, but this finding must be treated with caution since the position was unknown in just under a quarter of the cases (Appendix 9: Table 7.9).

NUMBER OF PREVIOUS CONVICTIONS

Data on the number of the defendants' previous convictions was limited since in many cases the defendant's criminal history was unavailable (see Chapter 6). Thus the majority of defendants (85 per cent) were recorded in the data as either having no previous convictions or the position was unknown (out of available data: 4 per cent more black defendants than white defendants were recorded as having previous convictions of which 2 per cent more black defendants had 1-4 *and* 5 and over previous convictions). However, the association between NUMBER OF PREVIOUS CONVICTIONS and REMANDED IN CUSTODY was *statistically significant*.

Out of defendants remanded in custody, almost one third (32 per cent) of all defendants, and 2 per cent more black defendants than white defendants, had previous convictions. There was also some difference in terms of 'race' and remands in custody rates according to the number of previous convictions. Out of 52 defendants with 1-4 previous convictions, 2 per cent more black defendants were remanded in custody than white; whereas out of 18 defendants with 5 and over previous convictions, 3 per cent more white defendants were remanded in custody than black (Appendix 9: Table 7.10). This suggests that black defendants with previous convictions, and especially those with fewer than 5, were more likely to be remanded in custody than their white counterparts. However, these findings must be treated with caution owing to the limited data available.

ACCOMMODATION AND PSYCHIATRIC CONDITION

The police and the Crown Prosecution Service need to ascertain the defendant's address so that further enquiries in relation to the defendant can be made, and so that any failure to attend court can be pursued. In some cases a bail condition of 'residence' is imposed (see Chapter 10). Thus defendants with no fixed address, commonly referred to as 'no fixed abode' ('NFA'), may not be viewed favourably in relation to bail applications.

It was interesting to note, therefore, that the association between ACCOMMODATION and REMANDED IN CUSTODY was *statistically significant*, which suggests a relationship between these variables.

An equal percentage (3 per cent) of all black and white defendants were said to be of NFA, and 8 per cent of all defendants remanded in custody were said to be of NFA, again comprising an equal proportion of black and white defendants (Appendix 9: Table 7.11). This suggests that black and white defendants of NFA were equally likely to be remanded in custody.

The association between PSYCHIATRIC CONDITION and REMANDED IN CUSTODY was *statistically significant* which suggests a relationship between these variables. 3 per cent of all defendants, and 7 per cent of defendants remanded in custody, had their psychiatric condition brought to the attention of the court. Only 1 per cent more black defendants than white defendants had their psychiatric condition brought to the attention of the court. Where this occurred black defendants were remanded in custody at a higher rate (22 per cent more) than white defendants.

Whilst it is acknowledged that the methods used in the initial data analyses do not take into account all relevant variables that may effect the court's decision to grant or refuse bail, so that the question of comparability is not fully addressed, the results have raised the presumption of a 'race' effect in court decision-making on bail. The strongest evidence of this being that the association between MOST SERIOUS CHARGE and RACE, and RATING FOR CHARGES and RACE are statistically significant in relation to all defendants and also those remanded in custody. Therefore, the findings in relation to the combined sample only partially support the discrimination hypothesis.

Initial Analysis Comparing Highbury and Haringey

In this section, preliminary testing is undertaken of the supposition that ‘the decision on bail (as with other court decisions) is geographically and court specific, dependent largely on different “court cultures” and thus subject to significant disparity’. The sample consisted of 233 males (116 black and 117 white) at Highbury, and 230 males (115 black and 115 white) at Haringey.

Dependent variables

In order to test for court disparity, firstly, rates of remands in custody were compared as between the two courts without controlling for any of the variables which might have explained any differences, and, secondly, rates of refusal of bail on first appearance were compared taking into account the composition of the benches at each court.

Comparison of rates of remands in custody not taking ‘race’ into account

At the outset it was found that remand in custody rates were slightly higher at Haringey than at Highbury: 2 per cent more defendants were remanded in custody at Haringey where the rate was higher than the expected frequency (Appendix 9: Table 7.12).

Overall, a larger proportion (4 per cent more) defendants were refused bail on first appearance at Haringey as compared to Highbury (Appendix 9: Table 7.13). When compared to the final rates of remands in custody (Appendix 9: Table 7.12), it can be observed that only 4 more defendants were subsequently remanded in custody following first appearance at Highbury, but that there was no change in the final rates of remands in custody at Haringey.

There was a considerable difference between the courts in terms of the type of bench which dealt with defendants’ bail applications on first appearance. At Highbury, first appearances were predominantly before a stipendiary (73 per cent), whereas at Haringey,

they were predominantly before justices (87 per cent). COURT by TYPE OF MAGISTRATE was *highly associated and statistically significant* for all defendants. Out of 91 defendants refused bail on first appearance the relationship between these variables was *statistically significant*.

There was little difference between the courts in the overall rate of refusals of bail on first appearance before justices (only 1 per cent more at Highbury), but in the case of stipendiaries the difference was considerable (30 per cent more at Haringey). Another distinction between the courts was that at Highbury, there was little variation in the rate of refusals of bail on first appearance as between the two types of bench, whereas at Haringey, 29 per cent more occurred when defendants appeared before a stipendiary (Appendix 9: Table 7.13).

Although there was some difference between the courts in rates of refusals of bail on first appearance and subsequent remands in custody in that, overall, defendants were more likely to be denied bail at Haringey, when the findings from the two courts were compared, this difference did not amount to a 'significant disparity', save in terms of the different types of magistrates hearing the case. It could be implied that any difference between 'court cultures' *rather than being geographically-specific, was more linked to different types of bench*, stipendiaries being more likely to be harsher in decisions on bail. Therefore, this study found that the disparity hypothesis could only be partially supported.

Comparison of rates of remands in custody taking 'race' into account

At each court 5 per cent more black defendants than white defendants were remanded in custody where the number of the former was also higher than the expected frequency. Rates of remands in custody were slightly more severe for both black and white defendants at Haringey: 3 per cent more black defendants were remanded in custody at Haringey than

those at Highbury, and 2 per cent more white defendants were remanded in custody at Haringey than those at Highbury (Appendix 9: Tables 7.14, 7.15).

Black defendants were refused bail on first appearance at a higher rate than white defendants at both courts, and again, this was slightly more marked at Haringey: 4 per cent and 5 per cent more black defendants than white defendants were refused bail on first appearance at Highbury and Haringey respectively.

Rates of remands in custody compared to racial composition of court areas

It has been firmly established that black people are over-represented in the prison population, and especially in the remand prison population in comparison to the proportion of black people in the general population (see Introduction and Chapter 5). In this research further analysis was undertaken to investigate whether black males were over-represented in the remand in custody rates in the two specific areas where the bail surveys were carried out. Although Highbury Corner Magistrates' Court is situated in the London Borough of Islington, the data in the Highbury sample was collected in Court No.2 which has jurisdiction in Hackney. Data in the Haringey sample corresponded to the court's jurisdiction in Haringey (see Chapter 6). In order to examine the question of the racial composition of defendants remanded in custody in the two court areas, the proportion of black and white defendants remanded in custody who were resident in these areas in terms were compared to their respective proportions in the male general population of the areas concerned. In most cases defendants' 'residence' was determined from addresses as stated in court lists (see Chapter 6) but in some cases from information stated in open court.

Therefore, rates of remands in custody of black male defendants at Highbury and Haringey, resident in Hackney and Haringey respectively, were compared with the composition of the general male populations of the London Boroughs of Hackney and Haringey, and a comparison was made to the position of white male defendants. The age

groups in the Census statistics were set out from 0–4 years to 85 and over. Males in the age groups 10–14 to 70–74 in these statistics were used in the analysis of the Highbury data, since the ages in the sample ranged from 13–74. Males in the age groups 10–14 to 60–64 in the Census statistics were used in the analysis of the Haringey data, since the ages in the sample ranged from 12–63 years (see Appendix 10).

Overall, at Highbury, white males 10–74 years, and at Haringey, white males 10–64 years were *under-represented* among defendants remanded in custody in relation to their proportion in the general male population, in contrast to black males in these age groups, who were *over-represented*:

- All white males accounted for 44 per cent of all defendants remanded in custody at Highbury, however, only 16 per cent of white males remanded in custody at Highbury were *resident* in Hackney, as compared to 68 per cent in the population in Hackney: a ratio of 0.23 (15.6/68.0).
- All white males accounted for 44 per cent of all defendants remanded in custody at Haringey, however, only 16 per cent of white males remanded in custody at Haringey were *resident* in Haringey as compared to 77 per cent in the male population in Haringey: a ratio of 0.21 (16.0/76.7).
- All black males accounted for 56 per cent of all defendants remanded in custody at Highbury, however, only 31 per cent of black males remanded in custody at Highbury were *resident* in Hackney as compared to 21 per cent in the population in Hackney: a ratio of 1.5 (31.1/20.8), amounting to *one and a half times* their proportion in the population.
- All black males accounted for 56 per cent of all defendants remanded in custody at Haringey, however, only 36 per cent of black males remanded in custody at Haringey were *resident* in Haringey as compared to 13 per cent in the male population: a ratio of 2.8 (36.0/13.1), amounting to *almost 3 times* their proportion in the population (Appendix 10: Tables 1–4).

This suggests that white defendants were treated similarly at each court in terms of the *overall* rates of remands in custody and also when compared to the proportion of white males in the general population in Hackney and Haringey, in that at both venues white males were under-represented in the remand figures to a similar degree. While the *overall* rates of remands in custody for black defendants was similar at each court, when residence

was taken into account, the difference was more marked. Almost twice the proportion of black defendants resident in Haringey were remanded in custody at Haringey than black defendants resident in Hackney who were remanded in custody at Highbury when compared to their proportions in the general population of the respective areas. Moreover, the proportion of black defendants as compared to white defendants remanded in custody and resident in Haringey amounted to *twice* that of such defendants remanded in custody and resident in Hackney (2.59/1.27) (see Appendix 10)

Therefore, these findings support the disparity hypothesis in relation to *black* defendants but not in relation to white defendants. Further analysis showed that when residence *and* age was taken into account, the greatest disparity between the proportions of defendants remanded in custody in terms of 'race' occurs in the case of *young* black defendants although smaller numbers were involved (see below).

Independent variables

In several instances, the initial analysis comparing the data from the separate courts resulted in small numbers, and statistically significant results were only found in relation to the crosstabulations of MOST SERIOUS CHARGE by RACE for all defendants reached *statistical significance* at Highbury, and this also applied to AGE by RACE and RATING FOR CHARGES by RACE for all defendants and of those remanded in custody at Haringey. Although the analysis of the remaining variables in terms of 'race' is, therefore, not conclusive, it does provide a description and comparison of the data from the two courts and highlights any differences found between the positions of black and white defendants.

POLICE BAIL AND TYPE OF MAGISTRATE

Although there were a large number of missing values in the data, the association between POLICE BAIL and REMANDED IN CUSTODY was *statistically significant* at each court, and 6 per cent more defendants had been refused police bail at Haringey than at Highbury. 5 and 3 per cent more black defendants than white defendants were refused police bail at each court at Highbury and Haringey respectively. When the police refusals of bail rate was taken into account, the disparity supposition was supported to the extent that one possible difference in 'court cultures' seemed to emerge: whereas stipendiaries at each court, in addition to justices at Highbury, followed the police decision on bail in the case of white defendants, only *justices at Haringey* were more inclined to follow it in the case of black defendants.

AGE

The mean age of all defendants at Haringey was slightly younger than defendants at Highbury but the reverse was the case for defendants remanded in custody. Overall, for black defendants at Highbury the mean age was slightly older than for white defendants, whereas at Haringey it was younger. There was very little difference in terms of 'race' in the mean age for all defendants remanded in custody at Highbury, whereas for black defendants at Haringey it was younger than for white defendants.

In order to compare the rates of remands in custody at each court with the composition of the general male population in terms of RACE and AGE further analysis was undertaken whereby the results of the crosstabulation of these variables were compared with demographic statistics. Since the 1991 Census figures breaks down various age groups which includes the age group '20-24' (see Appendix 10), a comparison of remand in custody rates as between young and older defendants was analysed by re-coding the AGE variable into 2 categories: under 25 and 25 and over. At Haringey, where 6 per

cent more defendants were under 25 years than at Highbury, the association between AGE and RACE for all defendants, and of those defendants remanded in custody, was *statistically significant*. At Highbury 2 per cent more defendants over 25 years were remanded in custody than those under 25, whereas at Haringey there was no difference between the two age groups in the proportion of defendants remanded in custody. At Highbury defendants aged 25 and over were remanded in custody at a higher rate than those under 25, whereas there was no difference in the rates of remands in custody as between younger and older defendants at Haringey. In relation to black defendants, there was more than the expected frequency remanded in custody aged 25 years and over at Highbury, in contrast to the position at Haringey where more than the expected frequency were under 25.

In relation to defendants aged under 25, 4 per cent more black defendants were remanded in custody at Haringey than at Highbury, whereas 6 per cent more white defendants were remanded in custody at Highbury than at Haringey. There was little difference between the courts in the rates of remands in custody of black defendants aged 25 and over (less than 1 per cent more at Highbury than at Haringey) whereas 8 per cent more white defendants aged 25 and over were remanded in custody at Haringey than at Highbury (Appendix 9: Tables 7.16, 7.17).

At Highbury, 4 per cent more black defendants under 25 were remanded in custody than white defendants under 25. At Haringey, the difference was much more marked and reached *statistical significance*: 14 per cent more black defendants under 25 were remanded in custody than white defendants under 25. This difference amounts to an 89 per cent (14.1/15.9) or 0.9 times greater probability of a young black defendant at Haringey being remanded in custody than a young white defendant. It is interesting to note that the demographic evidence addressed below also suggests that *young black defendants at*

Haringey are the most heavily over-represented group among defendants remanded in custody when compared with their proportion in the general male population.

There was also some difference between the courts as between black and white defendants aged over 25: 6 per cent more black defendants were remanded in custody than white defendants at Highbury, whereas 3 per cent more white defendants were remanded in custody than black defendants at Haringey (Appendix 9: Tables 7.16, 7.17).

At Highbury, overall, white males 10-24 years were under-represented among defendants remanded in custody in relation to their proportion in the general male population in Hackney, in contrast to black males in this age group, who were over-represented:

- All white males 10-24 accounted for 24 per cent of all defendants remanded in custody at Highbury, however, only 4 per cent were *resident* in Hackney, as compared to 16 per cent in the population in Hackney: a ratio of 0.28 (4.4/15.8).
- All black males 10-24 also accounted for 24 per cent of all defendants remanded in custody at Highbury, but a larger proportion than young white males were Hackney residents; 13 per cent were *resident* in Hackney as compared to 7 per cent in the population in Hackney: a ratio of 2.0 (13.1/6.8), amounting to *twice* their proportion in the population.
- All white males 25-74 accounted for 20 per cent of all defendants remanded in custody at Highbury, however, only 11 per cent were *resident* in Hackney, as compared to 52 per cent in the population in Hackney: a ratio of 0.21 (11.1/52.2).
- All black males 25-74 accounted for 31 per cent of all defendants remanded in custody at Highbury, however, only 18 per cent were *resident* in Hackney as compared to 14 per cent in the population in Hackney: a ratio of 1.3 (17.8/14.0), amounting to just over that of their proportion in the population (Appendix 10: Tables 1-2).

At Haringey, black males, especially *young* black males, were even more over-represented among those remanded in custody than at Highbury:

- All white males 10-24 accounted for 14 per cent of all defendants remanded in custody at Haringey, however, only 6 per cent were *resident* in Haringey, as compared to 19 per cent in the population in Haringey: a ratio of 0.32 (6.0/18.7).

- *All* black males 10–24 accounted for 36 per cent of all defendants remanded in custody at Haringey, and a larger proportion than young white males were Haringey residents; 24 per cent were *resident* in Haringey as compared to 6 per cent in the population in Haringey: a ratio of 4.4 (24.0/5.5), amounting to *4 times* their proportion in the population.
- *All* white males 25–64 accounted for 30 per cent of all defendants remanded in custody at Haringey, however, only 10 per cent were *resident* in Haringey, as compared to 58 per cent in the population in Haringey: a ratio of 0.17 (10.0/58.0).
- *All* black males 25–64 accounted for 20 per cent of all defendants remanded in custody at Haringey, however, only 12 per cent were *resident* in Hackney as compared to 8 per cent in the population in Haringey: a ratio of 1.6 (12.0/7.6), amounting to nearly *twice* their proportion in the population (Appendix 10: Tables 3–4).

While the *overall* proportion of white defendants remanded in custody aged 10–24 was greater at Highbury than at Haringey, the reverse was the case in relation to those aged 25 and over. However, when residence was taken into account there white males in each age group were under-represented in the remand figures to a similar degree.

This was in contrast to the position of black males. In relation to black males aged 10–24 a larger proportion *overall* were remanded in custody at Haringey than at Highbury, and *twice* the proportion of black residents in this age group were remanded in custody at Haringey than such defendants at Highbury. Moreover, the proportion of young black defendants as compared to young white defendants remanded custody and resident in Haringey amounted to *twice* that of black residents remanded in custody and resident in Hackney (2.59/1.27). Although, overall, a larger proportion of black defendants aged 25 and over were remanded in custody at Highbury than at Haringey, there was little difference between the proportions of black and white defendants remanded in custody in this age group when residence was taken into account.

Therefore, further analysis of the data taking residence *and* age into account shows that the disparity hypothesis is only clearly supported in relation to black defendants aged 10–24 years and is not supported in relation to black defendants aged 25 and over nor to white defendants in either age group.

MOST SERIOUS CHARGE

At each court, it was found that there was a strong relationship between MOST SERIOUS CHARGE and REMANDED IN CUSTODY since the association between these variables was *highly statistically significant*. The association between MOST SERIOUS CHARGE and RACE was also *highly statistically significant*, but, again, this crosstabulation resulted in small numbers in some of the individual offence groups which may have diminished the chi-square test. When re-coded into 4 main groups (see previous section), the association between MOST SERIOUS CHARGE and RACE for all defendants reached *statistical significance* at Highbury. One similarity between the courts was in terms of the ‘race’ of defendants remanded in custody in these main offence groups.

Another similarity was that at both courts the majority of all defendants remanded in custody fell in the higher rating for charges category and a larger proportion of black defendants than white defendants were remanded in custody in the higher rating for charges category, the difference reaching *statistical significance* at Haringey. Furthermore, at Haringey 25 per cent more black defendants than white defendants under 26 were remanded in custody in the higher rating category. It could be implied that the over-representation of young black males in the remand rates at both courts was linked to the overall seriousness of the charges which they faced. However, this was particularly apparent at Haringey. From the available data it was not possible to determine whether this reflected a tendency for young black men in Haringey to commit more serious offences than in Hackney, or whether this resulted from a tendency for young black men to be *charged* with more serious offences.

Overall, it could not be fully determined whether differences in outcomes between the courts were a product of any distinguishable ‘court culture’ since the exact nature of any differences between the courts in terms of policy and practice was difficult to pinpoint.

The impact of the possibly highly influential role of court clerks, for example, at either court could not be measured. Similarly, the effect of any possible build-up of a 'hard reputation' attached to particular benches could not be quantified. Nevertheless, the findings did indicate that some manifestations of differences between the courts rather than being the result of different geographically-specific 'court cultures' was more linked to the different type of magistrate hearing the case, stipendiaries being found to be somewhat harsher in bail decision-making than lay justices. Therefore, overall the disparity hypothesis was only partially supported by the findings.

The main results of the initial data analysis on the separate bail surveys reflected those on the combined data since at each court it was found that the likelihood of a defendant being remanded in custody is most effected by *the gravity of most serious charge* and *the overall seriousness of all charges* in relation to maximum sentence, and that *black defendants were more likely to be remanded in custody than white defendants*. Therefore, the findings on the separate courts also raised *the presumption of a 'race' effect in court decision-making*, and, given the lack of comparability between cases and smallness of some of the numbers involved, also partially supported the discrimination hypothesis. This was also supported by the demographic evidence which clearly showed that black defendants at each court were over-represented in the remand in custody rates when compared to their proportion in the general male population in the relevant areas, whereas white defendants were not over-represented.

The simple statistical techniques used in the initial data analyses have drawn attention to their limitations in relation to the question of *comparability* between cases in the sample, and the difficulties encountered in trying to pinpoint the nature and extent of racism in the criminal justice process. The use of the more sophisticated statistical technique of logistic regression sought to redress these shortfalls in Chapter 8. Nevertheless, the initial data analyses did serve a useful function in isolating relevant

variables used in this subsequent analysis, in providing a detailed description of the data, and in providing an initial impression as to whether ‘race’ has any significant effect on the court’s decision to grant bail.

Chapter 8

Modelling Remands in Custody

When we are very young we are more likely to believe that a conjurer really is a magician. It is only when we become more experienced in the ways of the world that we come to know that he is nothing of the sort. The statistician is often regarded as something of a pseudo-magician. The statistician, however, cannot see into the future any more than anyone else and, although he may help by projecting a shaft of light – however small – from his torch of knowledge, he is still acutely aware that his battery is all often too weak to give anything but a shadowy outline.

(Reichmann, 1961: 13)

Introduction

The multivariate analysis explored in this chapter goes further than the initial data analysis since it ‘considers the simultaneous effects of many variables taken together’ (Rose and Sullivan, 1993: 242). A multivariate approach to the quantitative analysis was adopted since it can be argued that it facilitates the isolation of a ‘race’ effect in criminal justice decision-making (Walker, 1987a; Hood, 1992: 26-7; Mhlanga, 1997: 6; see Chapter 6). This analysis sought to test the discrimination hypothesis in relation to remand decisions (see Chapter 6 and 7).

The statistical analysis addressed in this chapter uses the SPSS ‘logistic regression’ procedure to explore whether or not the ‘race’ of the defendant was a variable which significantly effects the probability of being remanded in custody when all other variables which have an effect on that decision have been controlled for. This technique provides a more sophisticated multivariate analysis in order to try to discover how far ‘race’ can be isolated as the *key* variable in the court’s decision on bail. However, regression analysis has been criticised on the grounds that ‘race’ cannot be conceptualised as a ‘discrete variable, an object arrested in time and space that can be disconnected from other apparent,

objective “non-racial” explanators’ (Holdaway, 1997: 385). Problems will always remain in meaningfully isolating ‘race’ as a statistical variable (Gilroy, 1982, 1983, 1987b; Fitzgerald, 1993; Holdaway, 1997).

Logistic regression was selected since this technique is able to take into account key variables affecting the court’s decision whether or not to remand a defendant in custody, including the RACE variable. This procedure produces a logistic regression model, a statistical model ‘in which the dependent variable is just the natural logarithm of the ratio of the probability (P) of experiencing an event during a particular period to the probability of not experiencing it ($1-P$)’ (Rose and Sullivan, 1996: 221). Therefore, in logistic regression it is possible to estimate the probability of an event occurring. Here the model is used to estimate the probability of a defendant being remanded in custody using key variables as predictors (see Appendix 11, section 1). Another important facet of the logistic regression analysis was that the results were used to formulate a Total Probability of Remand in Custody Score (see Appendix 7: [22]), created by saving the ‘predicted value’ in the logistic regression output, which follows the method used in Hood’s (1992) study on ‘race’ and sentencing.

Logistic Regression Analysis on the Combined Data

At the outset of the data analysis, various statistical tests, such as frequencies and crosstabulations of variables, were undertaken in order to identify those variables which had a significant impact on the remand decision. One aim was to isolate various sub-sets of variables which would be the most appropriate to include in the logistic regression input. In the model building stage, it was necessary to explore which variables were relevant so that a logistic regression model could be fitted in order to provide a meaningful explanation of the data. Taking into account initial data analysis findings and results from several different logistic models on the combined and separate court data, in addition to

consideration being given to knowledge of the subject area and findings in previous studies, eventually a core of independent variables was formulated which resulted in a 'good fit' for the final model with a correct prediction rate of 88 per cent (Appendix 11: Section 2). The remaining 12 per cent of cases were misclassified by the model (see Appendix 11: Section 3).

In the logistic regression in the dependent variable, REMANDED IN CUSTODY, was entered with 12 independent variables as follows: ACCOMMODATION, AGEGROUP, EMPLOYMENT, MOST SERIOUS CHARGE, MOST SERIOUS CHARGE WITHDRAWN, OFFENCE CHARGED COMMITTED WHILE ON BAIL, POLICE BAIL, PSYCHIATRIC CONDITION, RACE, NUMBER OF PREVIOUS CONVICTIONS, RATING FOR CHARGES, RATING FOR CHARGES WITHDRAWN. The first 9 were categoric variables while the remainder were continuous variables.

Table 8.1 represents the results from the logistic regression output showing the variables selected by the logistic regression model as having the greatest influence on the court's decision on whether or not to remand a defendant in custody. The model selected 6 predictor variables calculated to have a significant impact on the court's decision to remand a defendant in custody as follows:

- (1) MOST SERIOUS CHARGE;
- (2) OFFENCE CHARGED COMMITTED WHILE ON BAIL;
- (3) POLICE BAIL;
- (4) RATING FOR CHARGES;
- (5) NUMBER OF PREVIOUS CONVICTIONS;
- (6) PSYCHIATRIC CONDITION.

From an examination of the logistic regression findings, it was found that the above variables, (1)-(6) identified by the model as having a significant impact on the

court's decision to remand a defendant in custody were the same variables found to be *statistically significant* in the initial data analysis' crosstabulations of all defendants in the combined data by the main dependent variable, REMANDED IN CUSTODY, save that in the initial data analysis ACCOMMODATION was also found to be *statistically significant* in such crosstabulations. Furthermore, MOST SERIOUS CHARGE, OFFENCE CHARGED COMMITTED WHILE ON BAIL, and RATING FOR CHARGES were found to be *highly statistically significant* in these crosstabulations. In relation to NUMBER OF PREVIOUS CONVICTIONS and POLICE BAIL there was a large proportion of missing values in the data; and in relation to PSYCHIATRIC CONDITION and ACCOMMODATION only small numbers of defendants were identified as being of no fixed abode and as having their psychiatric condition brought to the attention of the court (see Chapter 7).

In addition to identifying the overall predictor variables (1)-(6) above, save for the continuous variables, (4) NUMBER OF PREVIOUS CONVICTIONS and (5) RATING FOR CHARGES, Table 8.1 also provides a more detailed break-down of the *individual categories of variables* calculated to have the greatest impact on *increasing* the chances of being remanded in custody. According to the *positive b* coefficient, the exponential of **b** ('**Exp(b)**') or the 'odds multiplier', (cf. Hood, 1992: 257), and the significance level ('**Sig.**') read in conjunction with the degrees of freedom ('**df**')(see Chapter 7), in order of severity [i-ix], these were as follows:

- [i] 'Serious violence and other grave crimes' (1);
- [ii] 'offence charged committed while on bail' (2);
- [iii] 'Household burglary' (1);
- [iv] 'Blackmail/ Robbery/ Kidnapping'(1);
- [v] 'GBH s.20'(1);
- [vi] 'Supplying drugs' (1);

- [vii] 'Police bail-refused' (3);
- [viii] 'Fraud/ Handling' (1);
- [ix] RATING FOR CHARGES (4);
- [x] 'Other burglary/Theft' (1);
- [xi] NUMBER OF PREVIOUS CONVICTIONS (5).

Based on the *negative b* coefficients, Table 8.1 also shows that 6 categories of variables *decrease* a defendant's likelihood of being remanded in custody in the following order of severity: 'Sexual offences' (other than Rape) (1), 'psychiatric condition *not* brought to the attention of the court' (6), 'offence *not* committed while on bail' (2), 'police bail granted' (3), 'Minor violence' (1), and 'Public disorder' (1). These findings reflect those in the initial data analysis on the combined sample set out in Chapter 7.

It is immediately apparent that RACE was *not* selected by the model as one of the variables having a significant impact on the court's decision to remand a defendant in custody. However, on closer examination of the logistic regression output it can be argued that this may have been because the influence of 3 out of the 6 variables which *were* selected may have resulted in a substantial 'masking' of the 'race' effect in bail decision-making as described below.

In the above findings [i]-[xi], 7 out of the 11 individual categories of variables: [i], [iii-vi], [viii] and [x], relate to (1) MOST SERIOUS CHARGE, and one, [ix], relates to (4) RATING FOR CHARGES. Since in the initial data analysis it was also found that crosstabulations by these 2 variables of all defendants by RACE, and of defendants remanded in custody by RACE, produced the only *statistically significant* results identifying these variables as having a strong association and significant influence on the remand decision (see Chapter 7), this could have helped to 'mask' the 'race' effect in the logistic regression analysis.

Table 8.1: Variables selected by logistic regression model as most important in predicting remands in custody

	Coefficients and significance levels			
	b	df	Sig	Exp(b)
Variable				
(1) MOST SERIOUS CHARGE		10	.0336	
Serious and grave crimes	1.6072	1	.0740	4.9888
Blackmail/Robbery/ Kidnapping	1.0700	1	.2514	2.9153
Supplying drugs	.8373	1	.7245	2.3101
Sexual offences	-5.8202	1	.6514	.0030
GBH s.20	.8402	1	.5443	2.3168
Public disorder	-.6569	1	.5051	.5185
Household burglary	1.2098	1	.1657	3.3527
Other burglary/Theft	.0930	1	.9129	1.0975
Fraud/ handling	.2012	1	.8316	1.2228
Minor violence	-.8397	1	.4505	1.2228
(2) OFFENCE CHARGED COMMITTED WHILE ON BAIL		2	.0000	
Yes	1.2331	1	.0285	3.4318
No	-1.6134	1	.0001	.1992
(3) POLICE BAIL		2	.0109	
Bail granted	-1.2690	1	.0255	.2811
Bail refused	.4842	1	.1766	1.6229
(4) RATING FOR CHARGES	.0006	1	.0299	1.0006
(5) NUMBER OF PREVIOUS CONVICTIONS	.1776	1	.0479	1.1944
(6) NO PSYCHIATRIC CONDITION	-2.0135	1	.0154	.1335

Furthermore, the model selection process in SPSS would have favoured a polytomous independent variable (with several values) over a dichotomous independent variable (with 2 values). Therefore, in this analysis, MOST SERIOUS CHARGE, a *polytomous* variable with 12 categories, and RATING FOR CHARGES, a *continuous* variable with several values, would have been favoured over RACE, a *dichotomous* variable with only 2 values – ‘black’ and ‘white’ (see Appendix 7).

The hypothesis that black defendants are remanded in custody at a higher rate than for *comparable* white defendants was not refuted, but evidence supporting it was thus far unclear. In order for it to be tested more comprehensively alternative means were sought to determine whether or not it *could* be revealed. This involved further analysis of the data by means of allotting a score to each case according to the probability of the defendant being remanded in custody, such scores being derived from the logistic regression output using a method similar to that in Hood (1992).

Total probability of remand in custody score on the combined sample

The Total Probability of Remand in Custody Score (‘TPRICS’) is the estimated value for each case of the *probability of a defendant being remanded in custody* and was derived from a new variable (‘TPRICS’) created by the logistic model. The score represents the overall seriousness of the case (see Hood, 1992: 74) and is always less than 1: the nearer the score is to 1, the higher the probability of the defendant being remanded in custody.

The mean TPRICS for all defendants was 0.21, and it was found that there was little difference in terms of ‘race’, although at 0.22 it was slightly higher for all black defendants as compared to 0.19 for all white defendants. For defendants remanded in custody the mean TPRICS was 0.69 indicating that the seriousness of these cases was greater than for defendants overall. Furthermore, it was found that the mean TPRICS for black defendants remanded in custody was 0.66 which was lower than that for white defendants remanded in

custody whose TPRICS was 0.72. These findings show that whilst *overall* the TPRICS was only marginally *higher for all black defendants* as compared to all white defendants, out of *defendants remanded in custody*, the TPRICS for *black defendants* was lower than for white defendants.

This could suggest that, overall, the *seriousness of the case* was lower for black defendants remanded in custody than for white defendants even though in the initial data analysis it was found that the *rate* of remands in custody for black defendants was *higher* (see Chapter 7). Further examination of the TPRICS was undertaken in terms of a comparison between black and white defendants in the combined sample divided into different TPRICS groups (following Hood: 1992: 84) representing different levels of risk of being remanded in custody as set out below.

TPRICS divided into 10 risk groups

In this research the Total Probability of Remand in Custody Score was initially divided into 10 'risk groups' (in Hood's [1992] study it was originally divided into 9 levels) as follows:

- Risk group 1 = TPRICS greater than ('GE') 0 and TPRICS less than ('LE') 0.1
- Risk group 2 = TPRICS GE 0.1 and TPRICS LE 0.2
- Risk group 3 = TPRICS GE 0.2 and TPRICS LE 0.3
- Risk group 4 = TPRICS GE 0.3 and TPRICS LE 0.4
- Risk group 5 = TPRICS GE 0.4 and TPRICS LE 0.5
- Risk group 6 = TPRICS GE 0.5 and TPRICS LE 0.6
- Risk group 7 = TPRICS GE 0.6 and TPRICS LE 0.7
- Risk group 8 = TPRICS GE 0.7 and TPRICS LE 0.8
- Risk group 9 = TPRICS GE 0.8 and TPRICS LE 0.9
- Risk group 10 = TPRICS GE 0.9 and TPRICS LE 1.0.

As noted above, a higher score corresponds to a higher risk of a defendant being remanded in custody, so that Risk group 1 represented the lowest risk while Risk group 10 was the highest.

Table 8.2: Percentage of all defendants and defendants remanded in custody in 10 risk groups and proportion remanded in custody by race

	Percentage of all defendants	Percentage of all defendants remanded in custody	Percentage of all defendants remanded in custody by race
Risk group			
Risk group 1	59%	10%	4% more black
Risk group 2	12%	7%	15% more black
Risk group 3	8%	12%	4% more black
Risk group 4	3%	5%	23% more white
Risk group 5	2%	5%	24% more white
Risk group 6	3%	14%	29% more white
Risk group 7	3%	8%	equal
Risk group 8	3%	8%	3% more white
Risk group 9	4%	17%	22% more black
Risk group 10	4%	14%	27% more white
Totals	100%	100%	

Table 8.3: Proportion of defendants remanded in custody by TPRICS in 10 risk groups by race

	Race					
	Black remanded in custody		Total black	White remanded in custody		Total white
Risk group		Row %			Row %	
Risk group 1	7	(5.7)	123	2	(1.3)	149
Risk group 2	6	(19.4)	31	1	(4.3)	23
Risk group 3	7	(29.2)	24	4	(33.3)	12
Risk group 4	3	(27.3)	11	2	(50.0)	4
Risk group 5	1	(33.3)	3	4	(57.1)	7
Risk group 6	5	(71.4)	7	8	(100.0)	8
Risk group 7	4	(57.1)	7	4	(57.1)	7
Risk group 8	3	(60.0)	5	5	(62.5)	8
Risk group 9	9	(100.0)	9	7	(77.9)	9
Risk group 10	8	(72.7)	11	5	(100.0)	5
Totals	53	(22.9)	231	42	(18.1)	232

Table 8.4: Percentage of all defendants and defendants remanded in custody in 3 main risk groups and proportion remanded in custody by race

	Percentage of all defendants	Percentage of all defendants remanded in custody	Percentage of all defendants remanded in custody by race
Risk group			
Low risk	78%	28%	7% more black
Medium risk	12%	33%	23% more white
High risk	10%	39%	3% more black
Totals	100%	100%	

Table 8.5: Proportion of defendants remanded in custody by TPRICS in low, medium and high risk groups by race

	Race					
	Black remanded in custody		Total black	White remanded in custody		Total white
Risk group		Row %			Row %	
Low risk	20	(11.2)	178	7	(3.8)	184
Medium risk	13	(46.4)	28	18	(69.2)	26
High risk	20	(80.0)	25	17	(77.3)	22
Totals	53	(22.9)	231	42	(18.1)	232

Nearly three fifths of all defendants were in the lowest risk group, whereas just over three fifths of defendants remanded in custody were in the 5 highest risk groups (Table 8.2). The percentage of black defendants was larger than white defendants and their frequency was higher than expected in risk groups 2, 3, 4, and 10, whereas the percentage of white defendants was larger than black defendants and their frequency was higher than expected in the remaining risk groups save for in 7 and 9, where there was no difference in the proportion of black and white defendants and both were equal to the expected frequency. In risk groups 1–4, and 9–10, comprising just under two thirds (65 per cent) of defendants remanded in custody, there was higher than the expected frequency of black defendants remanded in custody, whereas in risk groups 5–8, comprising just over one third (36 per cent) of defendants remanded in custody, there was higher than the expected frequency of white defendants.

A comparison of rates of remands in custody in terms of ‘race’ in each of the 10 risk groups with the number of defendants in each group revealed a pattern of differences according to the severity of risk. It was found that black defendants were remanded in custody at a higher rate than white defendants in the 3 lowest risk groups 1–3, and in the second highest risk group, group 9, together comprising 83 per cent of all defendants (Tables 8.2–8.3). In the middle range of risk groups 4–7 (together comprising 11 per cent of all defendants), white defendants were remanded in custody at a higher rate than black defendants in risk groups 4–6, and in risk group 7 (comprising 3 per cent of all defendants), black and white defendants were remanded in custody at an equal rate. In the 3 highest risk groups 8–10 (together comprising 11 per cent of all defendants), white defendants were remanded in custody at a higher rate than black defendants in risk groups 8 and 10, while the reverse was the case in risk group 9.

One explanation for the harsher treatment of black defendants in the lower risk groups is that in cases where *the overall seriousness of the case is low* it is likely that the

court had *more scope to exercise discretion* in its decision to remand a defendant in custody. Arguably this is similar to other points of the criminal justice process where discretion is pivotal in decision-making. For example, Hood’s (1992) findings ‘confirmed the hypothesis that race appeared as an influential variable where the courts had greater room to use their discretion in sentencing’ (Hood, 1992: 84).

TPRICS divided into low, medium, and high risk groups

The findings in the above sub-section suggested that in terms of ‘race’, rates of remands in custody could be broadly distinguished according to whether defendants were in the low, middle, or high range risk groups. Taking these findings into account and also so as to avoid the smallness in numbers which sometimes occurred in the analysis where the data was broken down into 10 groups, the data was further analysed whereby it was divided into only 3 main groups (again, similar to Hood, 1992): low risk (comprising risk groups 1-3), medium risk (comprising risk groups 4-7), and high risk (comprising risk groups 8-10). This was derived from re-coding the TPRICS as follows:

- Low risk = TPRICS greater than (‘GE’) 0 and TPRICS less than (‘LE’) 0.3
- Medium risk = TPRICS GE 0.3 and TPRICS LE 0.8
- High risk = TPRICS GE 0.8 and TPRICS LE 1.0.

Just over three-quarters of all defendants were in the low risk group and the remainder was almost equally divided between the medium risk group and the high risk group (Table 8.4), and this pattern also applied to the distribution of defendants in terms of ‘race’ (Table 8.5). However, the percentage of black defendants was slightly larger than white defendants and their frequency was higher than expected in the medium and high risk groups whereas it was slightly smaller than white defendants and lower than expected in the low risk group.

A third of defendants remanded in custody were in the medium risk group, and just under a third were in the low risk group; as may be expected, the largest proportion were in

the high risk group (Table 8.4). This clearly suggested that an increase in the likelihood of being remanded in custody was concomitant with an increase in the overall seriousness of the case. Furthermore, out of defendants remanded in custody, it was found that the association between TPRICS and RACE was *statistically significant* which suggests a relationship between the overall seriousness of the case and 'race' in relation to defendants remanded in custody. It was found that it was only in the low risk group that the percentage of black defendants was larger than white defendants and where the frequency of black defendants was higher than expected, whereas the reverse was the case in the medium and high risk groups.

Although overall, 5 per cent more black defendants were remanded in custody than white defendants (Table 8.5; Chapter 7: Table 7.1), when rates of remands in custody in the 3 main risk groups were compared with the number of remands in custody in terms of 'race', it was found that *black defendants were remanded in custody at a significantly higher rate than white defendants in the low risk group and in the high risk group*. The position was more marked in the low risk group which involved much greater numbers than those in the high risk group. In the medium risk group, white defendants were remanded in custody at a significantly higher rate than black defendants and the position was much more marked than in the case of black defendants in the other groups, however, the numbers involved were relatively small.

As between the 3 main risk groups, risk of custody in terms of 'race' was as follows:

Low risk group (TPRICS GE 0 and LE 0.3 = 78 per cent of combined sample): 7 per cent more black defendants were remanded in custody than white defendants, a difference which amounts to a 195 per cent (7.4/3.8) or 2 times greater probability of a black defendant than a white defendant being remanded in custody. This is equivalent to approximately 200 black defendants for every 100 white defendants;

Medium risk group (TPRICS GE 0.3 and LE 0.3 = 12 per cent of combined sample): 23 per cent more white defendants were remanded in custody than black defendants, a difference which amounts to a 50 per cent (22.8/46.4) or 0.5 times greater probability of a white defendant than a black defendant being remanded in custody. This is equivalent to 150 white defendants for every 100 black defendants; and

High risk group (TPRICS GE 0.8 and LE 1.0 = 10 per cent of combined sample): 3 per cent more black defendants were remanded in custody, a difference which amounts to a 3 per cent (2.7/77.3) or 0.04 times greater probability of a black defendant than a white defendant being remanded in custody. This is equivalent to 104 black defendants for every 100 white defendants (Tables 8.4–5).

Therefore, black defendants were at greater risk of being remanded in custody than white defendants where the overall seriousness of the case was either *low* or *high*, whereas white defendants were at greater risk of being remanded in custody than black defendants where the overall seriousness of the case was *medium*.

Further interpretation of the above findings necessitated the examination of the key factors which affected results from the analysis the TPRICS when split into three levels. As noted above, TPRICS is the estimated value for each case of the *probability of a defendant being remanded in custody* which was derived from a new variable created by the logistic model and represents the overall seriousness of the case. Since in the initial data analysis two of the main findings were that the risk of being remanded in custody was significantly linked to MOST SERIOUS CHARGE and RATING FOR CHARGES (Chapter 7; Appendix 9: Tables 7.6; 7.7), and they were selected by the logistic model as 2 out of 6 predictor variables having the greatest impact on increasing the chances of a defendant being remanded in custody (Table 8.1), it could be deduced that these variables have a significant impact on the formulation of TPRICS.

Furthermore, RATING FOR CHARGES was a continuous variable which took into account the rating for up to 6 charges in terms of seriousness in relation to maximum sentence (see Appendix 3) and, similar to TPRICS, was amenable to analysis in terms of different numerical levels which would facilitate a comparison of findings. In Chapter 7, RATING FOR CHARGES data was split into 2 levels, 1–600 and 601–7000 (Appendix 9: Table 7.7), but for the purposes of the analysis in this chapter (see Table 8.6), in order to correspond to the TPRICS analysis, the data was split into 3 levels as follows: low rating

for charges (1–350), medium rating for charges (351–700), and high rating for charges (701–7000).

This division of data was deemed appropriate since it reflected different levels of seriousness of charge(s) as illustrated in the following examples (RATING FOR CHARGES shown in brackets):

Low rating for charges (1–350):

Black defendant aged 23 (Highbury Case no. 9) charged with Carrying blade/point (10), Drugs-possession Class B-cannabis (250), Taking motor vehicle without authority-allowing to be carried (30): remanded in custody (total 290);

white defendant aged 23 (Haringey Case no. 130) charged with Drugs-possession Class A-cocaine (350): *not* remanded in custody (total 350).

Medium rating for charges (351–700):

Black defendant aged 24 (Haringey Case no. 108) charged with Theft-shoplifting (500): *not* remanded in custody (total 500);

white defendant aged 21 (Highbury Case no. 61) charged with Burglary-dwelling (600): remanded in custody (total 600).

High rating for charges (701–7000):

Black defendant aged 21 (Haringey Case no. 24) charged with Robbery (800): remanded in custody (total 800);

white defendant aged 40 (Highbury Case no. 41) charged with GBH s.18 (800): *not* remanded in custody (total 800).

Table 8.6 shows that 8 per cent of all defendants remanded in custody had a low rating for charges and 2 per cent more black defendants than white defendants were in this category. A quarter of all defendants remanded in custody had a medium rating for charges, and there were slightly more white defendants (under 1 per cent) than black defendants. Two-thirds of all defendants remanded in custody had a high rating for charges and there were slightly more black defendants (just over 1 per cent) than white in this category.

Table 8.6: Proportion of defendants remanded in custody by rating for charges by race

	Race					
	Black remanded in custody		Total black	White remanded in custody		Total white
Rating for charges		Row%			Row%	
Low (1-350)	5	(5.4)	92	3	(3.3)	92
Medium (351-700)	9	(17.3)	52	15	(17.6)	85
High (701-7000)	39	(44.8)	87	24	(43.6)	55
Totals	53	(22.9)	231	42	(18.1)	232

Therefore, the pattern of remands in custody in terms of 'race' in relation to RATING FOR CHARGES (Table 8.6) was similar to that in relation to TPRICS (Table 8.5) when each variable was split into 3 levels of severity. Black defendants were remanded in custody at a higher rate than white defendants where, overall, the case was either *low or high risk*, and specifically where the *overall seriousness of all charges was either low or high*, although the position was more marked in the low categories. In contrast to this, white defendants were remanded in custody at a considerably higher rate than black defendants where the case was of *medium risk*, and at a slightly higher rate where the *overall seriousness of all charges was medium*.

Discussion of results

The results addressed in this chapter help to widen the criminalization/discrimination debate by drawing attention to specific factors which contribute significantly to one aspect of the apparent harsher treatment of black defendants in the criminal justice system. The findings have identified key factors having an important bearing on the decision to bail or remand a defendant and highlighted a 'race' effect which has been substantially 'masked' owing to the nature of such factors.

Results which were statistically significant enabled some generalisations to be made about bail outcomes:

Key points:

- the type and seriousness of the main charge, the overall seriousness of the charge(s) against the defendant and if the offence charged was committed while already on bail have the greatest impact on increasing the chances of being remanded in custody.
- the defendant's criminal history, psychiatric condition and refusal of police bail are also influential factors increasing the chances of being remanded in custody.
- owing to the nature of the specific variables in relation to the seriousness of the main charge and the overall seriousness of the charge(s) – the significance of 'race' in the bail/remand decision is 'masked' in the initial logistic regression analysis but it is revealed in further analysis of defendants' Total Probability of Remand in Custody Scores.

- overall, the seriousness of the case is *lower* for black defendants remanded in custody than for comparable white defendants although the overall rate of remands in custody for black defendants is *higher*.
- rates of remands in custody in terms of 'race' is determined according to whether defendants cases were of low, medium or high risk.
- black defendants are remanded in custody at a significantly higher rate than comparable white defendants in *low* and *high* risk cases and where the overall seriousness of all charges was *low* or *high*.
- black defendants were *twice* as likely to be remanded in custody than comparable white defendants in the *low* risk group: higher rates of remands in custody for black defendants in *less serious* cases – comprising the majority of cases where the scope for discretion is likely to be wider than in more serious cases – may be largely explained by the unfavourable exercise of discretion by the court for black defendants.
- white defendants are remanded in custody at a significantly higher rate than comparable black defendants in *medium* risk cases and where the overall seriousness of all charges was *medium* – this may be partly explained by the large proportion of white defendants charged with burglary.
- discretion is of key importance at the bail/remand stage, similar to at other stages of the criminal justice process (cf. Roshier and Teff, 1980; Box, 1981; Fitzgerald, 1993; Hudson, 1993; Gelsthorpe, 1996): black defendants are disadvantaged by the unfavourable exercise of discretion by key decision-makers (see also Chapters 2, 3, 5, 9 and 12); and,
- prior decisions by criminal justice officials substantially effect those taken subsequently (cf. Smith, 1997): black defendants are disadvantaged by discriminatory practices in relation to stops and arrests, prosecution (see also Chapter 2), refusals of police bail (see also Chapters 5, 7 and 9) and in sentencing. In particular, the 'up-tariffing' of court outcomes (see for example, Shallice and Gordon, 1990: 23; Hood, 1992: 22; see Introduction and Chapter 3) can result in the likelihood of black defendants having more previous convictions than white defendants – all of which *increase* the chances of being remanded in custody.

Overall, in the majority of cases *two legal factors* have the most important bearing on the remand decision :

- the most serious charge; and,
- the overall seriousness of the charge(s).

These findings concur with some previous studies which identified the seriousness of the offence as a determining factor in bail decision-making (King, 1971; Simon and

Weatheritt, 1974; Home Office, 1986a; MacLeod, 1991; Hood, 1992). Furthermore, the results suggest that they are key factors influencing black defendants' greater likelihood of being remanded in custody. This concurs with findings in Home Office (1986a), MacLeod (1991) and Hood (1992) (see Chapter 5). However, according to Fitzgerald differences in relation to charge 'only partially explain the over-representation of Afro-Caribbeans among remand prisoners' (Fitzgerald, 1993: 6). This also concurs with findings in this research which has identified other factors as being influential in bail decision-making. It is also argued that differences in charge(s) as between black and white defendants also leads to a 'masking' of a 'race' effect (see below).

Furthermore, in a small minority of cases a *non-legal factor* was also identified as being highly influential on the remand decision, that is:

- the defendant's psychiatric condition.

This was the sole 'non-legal' factor identified in the logistic regression analysis as having a significant impact on the remand decision but the initial data analysis in Chapter 7 revealed that only a small numbers of defendants were involved. The defendant's psychiatric condition was *not* raised in the qualitative research as being influential in bail decision-making but it is interesting to note that the high proportion of black defendants remanded in custody for psychiatric reports has been raised as a contemporary cause for concern (see Chapter 5). However, five other non-statutory factors were identified (see Chapter 9). As Fitzgerald has pointed out, there is a danger that when 'social' criteria are applied in bail/remand decision-making this may:

both disproportionately disadvantage Afro-Caribbeans and depend on subjective judgement.

(Fitzgerald, 1993: 36)

Although RACE was not selected by the logistic model in relation to the combined or separate court data, arguably this could have been the result of a ‘masking’ of the ‘race’ effect mainly by the selection of MOST SERIOUS CHARGE and RATING FOR CHARGES, which were closely associated with RACE, and which would have been favoured in the SPSS selection process because they had several categories as opposed to only two (see Appendix 7). Therefore, the ‘race’ effect may have been ‘masked’ by the ‘knock-on’ effects of black defendants tending to be charged with more serious charges and, overall, more serious charges in relation to maximum sentence as found in the initial data analysis (see Chapter 7).

Analyses of the Total Probability of Remand in Custody Score (‘TPRICS’) sought to ‘unmask’ a ‘race’ effect. These analyses showed that the degree of risk of being remanded in custody for black defendants was not uniform throughout the sample:

- overall, black defendants were remanded in custody at a significantly higher rate than comparable white defendants in low *and* high risk cases
- black defendants were remanded in custody at a significantly lower rate than comparable white defendants in medium risk cases
- the position of black defendants in low risk cases (cases where the overall seriousness of the case was low) was a key finding since the vast majority of all defendants (just over three-quarters) were found to be low risk although a slightly higher percentage were black
- black defendants were *twice* as likely to be remanded in custody than comparable white defendants in *low* risk cases: the role of court discretion may be the pivotal issue in less serious cases.

Although discretion plays a vital role in decision-making throughout the criminal justice process, arguably, scope for its exercise is likely to be wider in lower risk cases where their *overall seriousness is not very severe*. This concurs with findings in Hood (1992) that ‘race’ is a key factor in court decision-making where there is wide scope for discretion to come into play (see Hood, 1992: 84). Hall *et al.* have also observed that

‘where discretion is wide individual or peer group attitudes and prejudices have greater latitude through which to influence decision-making practices’ (Hall *et al.*, 1998: 17). A tendency towards the unfavourable exercise of discretion by the court in low risk cases may have been influential in the preponderance of harsher outcomes in bail decisions for black defendants within this category. It could have also had a considerable impact on the *overall rate of remands in custody* since, similar to white defendants, just over *three-quarters* of all black defendants’ cases were low risk.

One explanation for the considerably higher proportion (23 per cent more) of white defendants as compared to black defendants remanded in custody in the medium risk group is that this is linked to the most serious charge which such defendants faced. On closer examination of remands in custody in medium risk cases, it was found that 17 per cent more white defendants than black defendants were charged with either Burglary or Attempted Burglary. This may have attracted a harsher bail outcome for such defendants given Metropolitan Police anti-burglary campaigns which magistrates may have taken into account.

Harsher treatment of black defendants than white defendants in relation to remands in custody in the high risk group corresponded to the findings in relation to high rating for charges (3 per cent and just over 1 per cent respectively). This could suggest that, similar to low risk cases, bail outcomes for black defendants in high risk cases was closely linked to the greater overall seriousness of charges. However, since remand rates for black defendants in high risk cases was less marked than in low risk cases, it could be deduced that ‘race’ did not have such a significant impact on bail decision-making where the scope for the exercise of discretion was more limited.

The analyses addressed in this chapter have highlighted the difficulties in pinpointing a ‘race’ effect in the criminal justice process even when sophisticated statistical techniques are used. However, the weight of the findings supports the discrimination hypothesis. The

results suggest that there are *no indications that 'race' is not a discriminatory factor* at the bail/remand stage of the criminal justice system. As at other stages of the criminal justice system, there was no evidence that 'race' does not operate to the detriment of black defendants in court decisions on bail.

Chapter 9

Defendants' and Officials' Perceptions of Bail and Criminal Justice

The courts are racist but at the same time we know that we shouldn't really fall into the trap ... Because you're black that's not a crime but it makes it worse when you are in front of the jury, the magistrates, or the judge.

(Black defendant, aged 24, Haringey Case No. 171, 3 July 1992)

I think that at the end of the day what has to be said is that we are only caught in the wheel of the criminal justice system. As prosecution we assess the evidence, and we give our objections to bail ... I think you will not find any Crown Prosecutor basing his bail objections on the ethnic origin of the defendant.

(Asian Assistant Crown Prosecutor, CPS, 18 May 1993).

Introduction

Whilst quantitative data is able to reveal the degree to which black male defendants receive overall harsher treatment from the court in terms of being remanded in custody (see Chapters 7 and 8) and in relation to bail conditions (see Chapter 10), wider aspects of the court's decision-making process remain immune to statistical analysis. The aim of the qualitative research in this chapter is to explore further the issue of discrimination by means of the perceptions and experiences of key players in the criminal justice process, including CPS, probation and magistrates as well as defendants. The methodology employed and the potential benefits of qualitative research are described in Chapter 6.

Interview data from these key players is recorded and discussed below in relation to six key emergent themes: police practices and police bail; difficulties in isolating 'race' as a determining factor in bail and sentencing; stereotyping the black defendant; discretion

within rules in bail decisions; non-legal factors in bail decisions; and racism versus the ‘colour-blind’ approach to criminal justice. All informants referred to are male unless otherwise indicated. Defendants chose their own pseudonyms.

Police Practices and Police Bail

The occurrence of discriminatory police practices in the case of black suspects and defendants (see Chapter 2) was identified in the qualitative analysis as a significant factor in the criminalization process which could have some bearing on their differential treatment in police and court bail decisions. Similar to its importance at other stages of the criminal justice process such as sentencing (Hood, 1992), the impact of discretion in police decision-making was also highlighted. The case study on ‘Roger’ aged 21 (Highbury Case no 19), a defendant who expressed strong anti-police feelings, illustrates why this may be typical of many young black people:

I am bitter against the police. Anyway I have grown up around them. I have seen my friends get stitched up for things they haven’t done. I’ve seen my friends beaten up. I know a man could get killed by the police. They make out *we* are so bad, but *they* get away with it when they lie. They are white, the judges are white, most of the jury is white. They get away with everything, that’s why I am bitter against the police, I’ve seen how they behave...I do not hate all police, some of them are OK, but I hate the majority of police.

When interviewed, ‘Roger’ lived with his mother and step-father, owner-occupiers in full-time employment, and three younger brothers in Hackney. He left school aged 16 without qualifications and at 18 worked for British Rail for a few months but felt that he had lost his job ‘due to court cases’. He had 5 previous convictions as follows:

- 1 23.3.88: Highbury Cr. Magistrates’ Court: Burglary of dwelling with intent to steal: Fined £100; costs £25.
- 2 9.5.89: Old Street Magistrates’ Court: Fail to surrender: Fined £100.
- 3 13.6.89: Old Street Magistrates’ Court: Fail to appear: Fined £100 or 1 day.
- 4 18.8.89: Snaresbrook Crown Court: Burglary: 160 Community Service.

Although 'Roger' and five others had been convicted in relation to the last offence for which he spent four periods on remand in custody and received a custodial sentence, he claimed that he had been innocent. Overall, he felt that the many court appearances, periods of being on bail with a condition of reporting to the police station, and periods remanded in custody had interfered with his employment prospects.

In relation to the case observed in the bail survey, 'Roger' was originally charged with GBH s.18 and remanded in custody for almost three and a half months before being granted bail at Highbury with conditions of reporting to the police station daily, curfew (9pm–7am) and residence. The case involved an incident at night when a white male (described by 'Roger' as 'old and drunk') waved a stick at him and his friend outside a chip shop. 'Roger' states that the man hit him in the face 'for no reason whatsoever' (it was later discovered that the same man had a reputation in the area for not liking 'coloured youth' and for often being drunk and abusive). He claims that he was acting in self-defence when he punched the man once, whereupon he fell back onto the ground. 'Roger' was arrested and taken to Stoke Newington Police Station and refused police bail. The man was taken to hospital unconscious and lapsed into a coma. He died about 5 weeks later.

Two police officers gave evidence that they saw the defendant give the victim a karate kick to the chest. Following the victim's death, 'Roger' appeared in court on the day of the expiration of the custody time limit for defendants on remand (70 days) and another bail application was made. The CPS conceded that the pathologist's report was not yet available but applied for an extension of the custody time limit using the same objections to bail as previously put to the court (the nature and gravity of the offence, the defendant's previous record, and likely custodial sentence if convicted of the current offence). The CPS stated that if this application were not successful the police would be

invited to prefer a murder charge immediately. The defence solicitor argued that the CPS had not acted 'with all due expedition' in preparing the relevant documents and it was noted by the stipendiary magistrate that no bundle of documents had been prepared in relation to the GBH charge. 'Roger' was then charged with Murder, but following a lunch-time break another CPS representative attended court and withdrew it. 'Roger' was re-charged with GBH and granted conditional bail.

Subsequently in relation to the same case he was charged with Manslaughter. He pleaded 'not guilty' at his trial at the Central Criminal Court where the case was observed on two occasions. The jury was composed of a black woman, a Chinese woman, four white women, an Asian man, and five white men. One of the police officers gave evidence that he saw the victim shaking a stick at the defendant who then kicked the victim in the chest and punched him in the face as he fell backwards. 'Roger' was found 'not guilty' on a unanimous verdict, the jury being persuaded by his claim of self-defence. He maintained that the police fabricated evidence about the 'karate kick'. His experience in this case is likely to have confirmed his distrust of the police.

Policing black people

The disproportionate stopping and harassing of black people by the police is well documented (see Chapter 2). Here one probation officer explained this practice in terms of discriminatory police action underpinned by racism:

Because racism is so apparent within our society, it is then turned onto black people. White clients do get stopped and harassed by police but not as often as the black clients do ... It is not as if they are doing anything wrong all the time, but it is racism that says, 'If we see a black person then that black person has done something wrong – has committed a crime', or the police just automatically suspect them, and it just seems that black people can't walk down the street without being harassed or stopped. That is because of the ideology of society that has gone on and that's perpetuated racism.

(Black female probation officer, Haringey)

The overwhelming feeling of informants was that discriminatory police practices are intrinsically linked with the unfavourable exercise of police discretion in relation to stops and arrests. This concurs with the Policy Studies Institute (1983) report by Lord Scarman (1981) which found prejudice and stereotyping among beat police officers. A probation officer clearly viewed differential treatment by the police in terms of 'race':

I think there's a kind of unconscious view starting from the police – and I wouldn't exclude the probation service either, but it starts from the police because they're the people have the first contact with people within the criminal justice system – of criminalising black people from an early stage.

(White probation officer, Highbury)

A solicitor also drew attention to the problem of police racism.

I take it as almost as part of the whole scene of doing this sort of work that the police are anti-black and that blacks are not going to get the same deal as middle-class whites would. It's just two worlds apart and it's not a question of trend, it's there.

(White solicitor, Stoke Newington)

In addition to 'Roger' in the case study above, two other black defendants believed that the police fabricate evidence against defendants in some cases. One also noted the widespread use of black informers:

I know about a lot of policemen going around stitching up people. My friend got done for the Broadwater Farm riot and he weren't there. A lot of black people grass up on black people. You know, it's a dog eat dog world.

(Black defendant, aged 24, Haringey Case No. 171)

The other defendant felt that the police deliberately provoke trouble with black youth:

There are certain bad policemen around the area who start trouble because they want you to get aggravated with them, so they can arrest you and say you done something. I can remember in 1987/88, that's when I think things was worse, all my friends had court cases, was getting stitched up by the police and getting picked up by the police ... I still know a lot of kids getting picked up once or twice a week.

(Black defendant, aged 21, Highbury Case No. 116)

Therefore, some informants were also of the view that the police took an active role in exacerbating conflict with black people in a more overt manner by harassment and/or the fabrication of evidence.

Police bail

Police bail represents another stage in the criminal justice process where police discretion could be of key importance. Any perceived unfairness by defendants denied police bail may increase feelings of distrust towards the criminal justice system. Although the legal criteria for the grant or refusal of police bail is provided in *PACE* 1984, the role of discretion is not fully addressed in the statute. However, previous research strongly suggests that police powers are to a high degree discretionary (Smith, 1997, Brogden, 1994; Metropolitan Police, 1985; Hall *et al.* 1998; see Chapters 2 and 12).

Qualitative research helps to reveal the impact of discretion from various informants' perceptions. In this study, it was evident that the police view was somewhat contradictory:

Our criteria for granting bail from the Police Station is now very clearly mapped out and there is very little scope for discretion ... There are directions that we abide by, or we hope the sergeants are trained to abide by those directions... In fact, what quite often happens these days, it's sad to say, is that the custody officer holds a sort of a court, as it were, a tribunal, where representations are being made to him by the defendant's solicitor and quite often by the officer in the case or the CID officers in the case. Then as a custody officer you have to decide on balance, whose argument is the strongest.

(White Police Inspector, Tottenham, Haringey)

But according to one solicitor police bail is refused:

... not under merits in the main, but as a punishment...it should be the duty of the custody officer to look at each case on its merits they don't – they basically do what the investigating officer tells them. The investigating officer will say, 'Bang 'em up till the morning', and that's what will happen. Young blacks often feel they're not getting a fair shake in court, and being refused police bail unfairly also gives them a sense of bitterness towards the criminal justice system, and that is just one more nail in the coffin as far their bitterness to society as a whole is concerned. Excessive stop and search of black youths is another thing in the same vein.

(White solicitor, Stoke Newington)

The 'knock on' effect of the denial of police bail was also raised:

Every judgment that's made about them seems to stem from the original decisions to prosecute them and often refuse police bail so that they're considered a less worthy bet for bail when they appear in court.

(White probation officer, Highbury)

Such qualitative data lends support to the proposition that the criminalization of black people stems from the first point of contact with the criminal justice system. It also suggests that the detrimental differential treatment of black people in relation to police bail has a 'knock-on' effect on all aspects of the later the court's decision-making. Whilst quantitative research suggests a contrary position that white defendants refused police bail are more likely to be remanded in custody than black defendants, in over half over the cases in the sample the decision on police bail was unknown (see Chapter 7). What is less in dispute is that although *PACE* provides strict criteria in the procedure for the granting or refusal of police bail, the key role of police discretion is widely recognised as setting in train a series of self-fulfilling prophecies through which discriminatory practices are upheld, maintained, and embedded.

Difficulties in Isolating 'Race' as a Determining Factor in Bail and Sentencing

Although some writers have rejected the notion that 'race' can be isolated as a specific variable in quantitative research (Gilroy 1982, 1983, 1987; Fitzgerald, 1993; Holdaway, 1997) others have argued that it is difficult though not impossible to show a 'race' effect in bail and sentencing (Walker, 1987a; Hood, 1992: 26-7; Mhlanga, 1997: 6). On the other hand, previous qualitative research has found widespread perceptions of injustice and discrimination in the criminal justice system emanating from members of black communities (for example, IRR, 1979; 1987), and this and previous qualitative research (for example, NACRO, 1991) from black defendants. This study on bail also

reveals such perceptions emanating from lawyers and probation officers. It is this disjunctive between experiential perception and statistical verification that lies at the heart of many of the ongoing disputes about the extent of criminal justice racism.

From an analysis of the qualitative data, this section addresses some of the circumstances which intensify difficulties in isolating 'race' as a determining factor in bail and sentencing. Firstly, given the relatively small proportion of black people in the general population in England and Wales (see Introduction), and, notwithstanding the concentration of black people in certain geographical areas, concerns were routinely expressed about *the high proportion of black people* who go through the criminal justice system:

I always found when I first entered the law and started going to court as an articulated clerk, that the number of black people that appeared in court quite shocked me. They *all* seemed to be black.

(Black solicitor, Tottenham)

One solicitor confirmed the above observation specifically about Highbury:

If you look down the cells at Highbury Corner there's always more black than white.

(White solicitor, Stoke Newington)

The issue of black over-representation in *remand prisons* was raised by the magistrate (formerly a Board Visitor Member at Pentonville Prison for eleven years and Chairperson of the Board for the previous three years):

I am very well aware of the remand problem in prisons, there is a disproportionate number of coloured people in the remand wings. I am very well aware of the imbalance of people and I cannot comment as to why there are more there than, shall we say, white people.

(White Chairperson to the Lay Justices, Haringey)

A solicitor also reflected on the issue of the high proportion of black defendants:

In terms of my experience in court actually making bail applications, it's difficult for me to give a specific answer on the question of differential treatment on the grounds of race, the reason being is that 90 per cent of the people I represent are black. I think that even in this area of Tottenham as a whole that percentage is quite high. So to compare like with like is always very difficult.

(Black solicitor, Tottenham)

Secondly, some of the informants tried to account for those difficulties in pinpointing racism in bail and sentencing by stressing the *covert nature of racial discrimination*. A solicitor considered that much discrimination is indirect:

It's very difficult for me to sort of think back and say what are the trends concerning black defendants because it's all very much anecdotal ... It's like in South Africa saying: 'Well, you can all have the vote as long as you've all got "A" Levels' – so they don't give anyone an education so no-one gets the vote, or what have you. They're not saying, 'Well, blacks can't do this, blacks can't do that'. It's *indirect*, but the effect is exactly the same, and that's the way discrimination works in the court because the courts perceive themselves as far too civilised to be racist. But it is the *covert* type of racism, and that is perhaps the most deadly of the lot because it's far more difficult to deal with.

(White solicitor, Stoke Newington)

Similarly, a barrister raised the problem of the covert nature of racism which made concrete proof of magistrates refusing bail on the grounds of the 'race' of the defendant – or interestingly the 'race' of the legal representative – so difficult to establish:

It's very difficult to point to any specific instances in which I'd be happy to say, 'For a variety of reasons I know that X was not granted bail because of the colour of his skin'. Though I'm unable to point to anything specific, I *have* left court having a gut feeling that if my client had been white, or if I'd been white, he might have got bail.

(Black barrister, The Temple)

Specifically in relation to bail decisions, it was also suggested that in the court's attempt to show that 'justice has been done', *magistrates would take steps to cover up any inference that the defendant's 'race' is taken into account*:

I'm not trying to diminish other evidence which suggests black people are equally disadvantaged, but the magistrates actually avoid treating – being seen to treat – black people in a bad way, whereas they seem not to make the effort with Irish people.

(White probation officer, Highbury)

It is interesting to note that American research including interviews with judges on 11 circuits found that 'judges took special pains to appear color-blind' (Myers and Talarico, 1986: 247).

Thirdly, specific difficulties concerning 'race' and the probation service were raised. One probation officer identified two trends in recommendations in pre-sentence reports which were particularly problematic for black defendants:

The tendency is for black defendants to be recommended for community service as opposed to probation. Once that happens, the next time it is almost certainly prison. When probation is recommended you also say whether or not they're suitable for community service. They're [the probation service] not arguing strongly enough for *probation* which would involve practical things like finding housing or employment or training. It's almost like they don't want to take on practical tasks.

(Black female probation officer, Highbury)

Another probation officer suggested the need for good practice to be established in order to combat particular difficulties which may arise in the interaction between probation officers and black defendants:

The other area that we have to take on board which we had internal research about is the disparity between our recommendations for black and white clients. We often plump for community service for black clients which is a higher figure than the recommendations for probation orders, and the message sort of came through to people that we really have to engage at another level with black clients. You know there is a distancing thing, and we have been advised from above that we should see black clients at least twice to try and get beyond that initial separateness.

(White female probation officer, Haringey)

These observations concur with the quantitative findings concerning the notion that overt racism in criminal justice is largely obfuscated by complex means (see Chapter 8).

Stereotyping the black defendant

Part of an explanation of the difficulty in isolating 'race' as a key determinant in criminal justice decision-making may simply lie in the impact of certain predominant stereotypes of black people (Hall *et al.*, 1998; see Chapter 1) and black criminality (Gilroy, 1982, 1987a; Keith 1993b; Hall *et al.* 1998). It is common argument, for example, that stereotypical images of the criminally-inclined as being young, uneducated, from a minority ethnic group, and resident in impoverished inner-city areas (see Box, 1983: 2) propel black people, and especially young black people, as primary targets of selective law enforcement practices ultimately resulting in disproportionate and unjustified levels of criminal justice sanction.

The case of 'Bionic', aged 24 (Haringey Case No. 171), illustrates this contention. 'Bionic' lived in Tottenham with his parents until their separation when he was 14, and in the same year a care order was made and he was placed in a children's home. His criminal history was as follows:

- 1 16.06.82: Tottenham Juvenile Court: Theft (shoplifting): 1 year supervision order to probation service.
- 2 20.07.83: Tottenham Juvenile Court: Criminal Damage: Attendance Centre Order for 12 hours.
- 3 18.05.84: Wood Green Crown Court: Burglary and Theft x 7 (plus 4 taken into consideration): 12 months youth custody on each concurrent.
- 4 4.12.85: Haringey Magistrates' Court (Highgate): Burglary: Probation (2 years).
- 5 17.03.86: Wood Green Crown Court: Attempted Burglary: Probation Order 12 months.
- 6 21.05.91: Haringey Magistrates' Court (Enfield): Handling and Theft: Probation (2 years).

'Bionic' completed a Youth Training Scheme course in painting and decorating and gained employment on a community programme working with young people, followed by

employment for 18 months with a Tenants' association until he lost his job because of cut-backs. He believed that his position as a black unemployed youth with a history of being in care was largely responsible for his vulnerability to excessive intervention by the criminal justice system:

Because you're black that's not a crime but it makes it even worse when you are in front of the jury, the magistrates, or the judge [see chapter headnote]. He hasn't any respect for you unless you have a job or you are doing something positive ... The judge loves a tax payer because he is getting your money, he knows you are working.

I have sussed it out, all the times I have gone to prison it is because I have not been working. If I had a good school report when I got into trouble as a juvenile maybe I wouldn't have got Y.C. [youth custody], but because I was in the children's home for being a bit unruly they wrote a bad report, but if I had a good report I would not have gone ... We shouldn't really fall into the trap of the court system.

'Bionic' eventually obtained his own flat, and after a period of unemployment, obtained work in warehouses but subsequently became unemployed again. It was during this period that he was again put on probation for Theft and Handling (cheques fraud). He started doing some voluntary work with young people in January 1992, and had hoped to go to college to follow a course in relation to children with special needs.

However, in May 1992, 'Bionic' was charged with Robbery with two co-defendants (Haringey Case nos. 172-3), one of whom was his cousin, 'Jacko' (see case study below). 'Bionic' was refused police bail, and bail on first appearance on the grounds that he would re-offend in view of his 'record'. He was remanded in custody for 13 days prior to being granted bail by the Crown Court with conditions of surety (£500), reporting to the police station twice weekly 6-8pm, residence, and not interfering with the prosecution witness. The case was followed through to Wood Green Crown Court where he and his co-defendants were convicted. 'Bionic' was sentenced to 18 months imprisonment.

This case study demonstrates how the criminalization of black people can begin when young resulting in non-custodial options in sentencing being used up at an early stage of their 'criminal careers' so that custodial sentences can be imposed earlier than for

their white counterparts (see Chapter 3). It also illustrates how social factors such as family and employment background, increase the chances of a black defendant being remanded in custody; and how the 'knock-on' or cumulative effects of social disadvantage are likely to increase the probability of custodial sentences being imposed on black defendants (Hood, 1992). In addition it indicates how notions and realities of socio-economic disadvantage in relation to family, education and/or employment background may be translated into negative stereotyping of black people which increases the likelihood of unfavourable treatment in the courts.

Qualitative data further highlighted the importance of unemployment in relation to custodial sanctions for black defendants:

There is a tendency for courts to stereotype people and it's probably more obvious with the Irish around here because there are a lot of them...With young black defendants similarly the courts do stereotype, but then there's also the factor which is sort of, as it were, indirectly racist ... Unemployment is a factor both in bail *and* in the way people are treated on sentence.

If someone's got a job to go to they are more likely to be given a fine because they can pay it, they're more likely to be given a non-custodial sentence because of the effect of a custodial sentence is worse because someone is going to lose their job, their stability ... The fact is obviously that there is a higher degree of unemployment amongst young blacks than young whites, and so it is *indirectly* racist, but it *is* racist because that's the effect ... a higher degree of young blacks who are locked up ...

First offender young blacks have got hammered rather more harshly than they might otherwise have been for street robberies and burglaries probably because of the stereotyping. Probably particular magistrates and particular lay benches who you see it from, it probably is an overt kind of racism. It's the odd thing that one notices – sometimes it sticks out like a sore thumb!

(White solicitor, Stoke Newington)

A probation officer also linked unemployment to criminal behaviour, and noted the negative effects of 'internalised racism' and racism as manifested in society:

To some extent racism hasn't decreased, it has increased, and there is a lot of unemployment in the area that I work in. That is no excuse for people to commit crime, however, it is one excuse that a lot of clients will use and I can sympathise with them.

If they've not been given the opportunity to gain gainful employment there doesn't seem to be any other way for them to actually survive within this present climate. So it's a combination of two things, the racism that is internalised, and the racism that has affected them from school and after. Black people have got a raw deal basically from society and they are trying to take it out on society, but in fact they are taking it out on themselves and on their own people.

(Black female probation officer, Haringey)

Black people may be also 'forced' into criminality as a strategy for survival in a hostile environment:

I think the society as a whole does not provide for those who are down. You can look at it from the perspective of one of these guys and say to yourself, 'They have nothing, why should they play by the rules of the others? They can't compete by the same rules. They've been to school but they haven't got the necessary educational qualifications. They haven't got the same opportunity to find jobs in the job market so they have to play by their wits'.

(Black solicitor, Tottenham)

Qualitative analysis also provided an insight about the way in which family background as evidenced in contents of some pre-sentence reports incorporated negative stereotyping about black defendants:

I've read reports where they make reference to people's culture without any need for it. Sometimes inferences are being made in terms of black males having children within different relationships – information which is not at all necessary. Background information, information about circumstances surrounding the immediate offence and what caused them to respond at that time is fine, but some people go so heavily into the background – it's almost like they're writing a sociological explanation for behaviour in total.

(Black female probation officer, Highbury)

A senior probation officer explained the procedure for combating racist and sexist stereotyping in pre-sentence reports:

You can't deny that people may have stereotyped views about black people. Reports are gate-kept ... reports *are* read in relation to sexist, racist language. The systems are there to try and ensure that it doesn't happen, but it's a long drip-feed exercise of education.

(White female Assistant Chief Probation Officer, Highbury)

In spite of such safeguards, from the above informants' observations, it appears that negative stereotyping may still permeate pre-sentence reports which could result in

decreasing black defendants chances of being placed on probation. Previous studies have also found that black defendants are less likely to receive probation than their white counterparts (Whitehouse, 1983; Hudson, 1989; Moxon, 1988; Hudson, 1993: 10). This in part may be attributed to pre-sentence reports being prepared less frequently for black defendants. The end result, as one probation officer simply acknowledged, is that:

Black people go to gaol sooner.

(White female probation officer, Haringey)

Criminal stereotypes and stereotypes of 'place'

Other informants added more general points about the influence of stereotyping on the criminalization of black people:

The image of the black mugger has not disappeared, and the black pickpocket stereotype is still around. A lot of people that I represent who are brought before the courts are not there because of what they have been found to have on them when they're searched. They're there because they've been spotted by a police officer and they've been in the police officer's eyes the sort of person who is likely to be involved in drugs offences ... You will always get the racist white policeman who has no qualms at all about stitching up a black youngster.

(Black barrister, the Temple)

Stereotyping black people as criminally-inclined was also viewed as encouraging crime in some circumstances:

For so many it is such an uphill struggle to keep on the straight and narrow. So many barriers are put in their path ... they are stopped by the police on the way to the college, so they think, 'Well, stuff it! Why should I change my ways?' They go inside and it then becomes a way of life ... If I were to put myself in their shoes I would say, 'What incentive is there for me to change? Why should I be an honest upright member of society if I get kicked in the teeth all the same anyway?' And I'd do it as well, maybe.

(White solicitor, Stoke Newington)

Stereotypes of 'place' as well as 'race' (cf. Keith, 1993b) were also identified as pervading information provided to the court:

Magistrates – even if they wish to be as fair as they could – are given partial information, and I think it's a process whereby black people and Irish people are operating with one hand behind their back. It doesn't happen with *all* black people. Some black people seem to get treated reasonably well, as do some Irish people, as they should be.

It's little things, for instance, if they're caught dealing and there's mention of Sandringham Road, emotive terms might be used like 'the Front Line' which create quite a powerful image. And that's what we're talking about – imagery, isn't it really, which is extremely powerful, negative stereotyping.

(White probation officer, Highbury)

The active role of the media in compounding predominant negative stereotypes of black people was also highlighted:

The stereotype of violent blacks is probably media inspired, I mean *The Daily Mirror* or *The Sun* can go to any court if they want to do a story on young blacks carrying weapons and doing violent crimes.

(White solicitor, Stoke Newington)

Given the debilitating impact of such stereotyping across various agencies and sites, racism may be 'internalised' to the extent that criminality becomes a self-fulfilling prophesy in the disadvantaged socio-economic milieu that many black people experience. It also provides some explanation for the differential treatment towards black suspects and defendants which cannot be readily revealed by quantitative research.

Discretion Within Rules in Bail Decisions

In the quantitative analysis *discretion* was identified as a key factor effecting remand decisions in the case of black defendants in *less serious cases* (see Chapter 8). However, the importance of discretion is likely to be of wider significance (see, for example, Box, 1981; Hudson, 1993: 9; see also Chapter 12). The qualitative research also sought to examine this proposition by analysing informants' perceptions of the way in which

discretion influences bail decision-making. Some informants were of the view that ‘race’ is clearly a determining factor:

Their chances of bail always seem so much less than white defendants.

(Black female probation officer, Highbury)

Notwithstanding the ‘presumption in favour of being granted bail’ established by the *Bail Act* 1976, s.4 (see Chapter 5), it was suggested that for black defendants the onus was on them to ‘prove’ that bail should be granted:

Benches do vary and there is that feeling that there is something else going on – not exactly that they are looking for reasons not to give them bail – but that they really have to prove that they should have it.

(White female probation officer, Haringey)

Police discretion may also have a detrimental influence for black defendants at the early stage of the bail process:

What the Police do is they go to court and they will whisper to the prosecution – if they don’t like you, especially if they hate you for some reason, ‘Don’t give him bail, he is bad to society!’ It is obvious that the prosecutor is going to say that to the judge. They don’t want you to get bail.

(Black defendant, aged 20, Haringey Case No. 173)

The legal criteria for the granting or refusal of court bail may allow *too much scope for discretion*:

The people who hold the grant of bail within their power aren’t obvious about the refusals. They don’t make it clear that they’re refusing you bail because of the colour of your skin. The reasons given are always dressed up, and frankly the Bail Act gives them such scope for saying what they want to say about reasons for not granting bail, such as, ‘We think you’ll commit further offences, we think you won’t turn up, we think you’ll interfere with witnesses’, all that sort of thing. There’s no way that they can prove that, and you can’t prove that your client might do that.

You can’t prove that they’re only saying that because they don’t like the look of your client, or they don’t like the colour of his skin. Although ... there have been cases where I’ve left court feeling that that *is* the reason why.

(Black barrister, The Temple)

After considering police objections, the CPS is responsible for presenting objections to bail (if any) to the court. The bench then considers whether they are established or not against the defendant.

The qualitative analysis in this section addresses the question of objections to bail and the legal (statutory) criteria for the refusal of bail. Each involves a discretionary element resting to no small degree on interpretations of offence ‘seriousness’, and defendant ‘reliability’.

The most common reasons for bail refusal (see Appendix 1) are usually given as:

That the defendant would fail to surrender to custody

Usually it is his previous record of bail that would tend to ground and support an objection to bail based on ‘failing to attend’. In a minority of cases, such as the much more serious offences, *i.e.* murder, rape, armed robbery, we also tend to look and say, ‘This offence is of such a serious nature, that if convicted he would be likely to face a long sentence, and so he might be tempted – if he knows that – to abscond and not turn up for his trial.’

(Asian Assistant Branch Crown Prosecutor, Northern Inner London Area)

That the defendant would commit an offence while on bail

Committing offences whilst on bail is more often one (objection) that we can very much substantiate. Like his record, for instance, if he has been granted bail by the same court or a previous court and has committed another offence whilst on bail for the other matter, what other demonstration of the defendant’s intent than that can be put before the court? The court in its wisdom has granted him bail on this occasion – what has he done? – he has gone and committed another offence whilst on bail, and particularly if it is a similar offence, like burglary – he tends to commit further offences of burglary, whilst on bail.

(Asian Assistant Branch Crown Prosecutor, Northern Inner London Area)

Local policing policies and practice could have some bearing on the court’s consideration of whether the defendant was deemed likely to commit further offences on bail:

If, in fact, a person is unruly and there is great fear of him committing further unruly offences, we may then consider perhaps that bail should not be granted. We have Operation Bumble Bee operating in this part of the Metropolitan area,

a five year programme against burglaries. If a person is committing further burglaries whilst on bail, then we are now being more severe in putting people into custody for that very reason ... You do not say automatically that every person that has committed a further burglary whilst on bail goes immediately into custody, but it becomes a major point for consideration.

(White Chairperson of Lay Justices, Haringey)

For the defendant's own protection

I think that to send a person into custody is for several reasons, it could be for their own protection, if, in fact, a case is so serious whereby they might be under attack from relatives, or friends of the victim. It doesn't come up very often, but it is not uncommon.

(White Chairperson of Lay Justices, Haringey)

When deciding if the legal criteria for withholding bail are satisfied, the bench considers the following factors:

Nature and seriousness of the charge

I think the main thing that we look for, first of all, is the seriousness of the offence that is alleged. We would then wish to know as much as possible, as quickly as possible, all about the person's background, their education, and their mental ability to understand what is going on, or what may have gone on, their previous record, if that is available ... You have to look at the severity of each particular case.

(White Chairperson of Lay Justices, Haringey)

Similar to the magistrate, the bail information officer was of the opinion that the seriousness of the charge was the most important factor in the court's decision on bail. He also explained why he felt that in some cases the original charge(s) were reduced:

Seriousness of the charge, I would say, is the most influential factor when we are talking about bail, really ... In terms of cases of charges being dropped down later and through the period even after the first week, that happens quite a lot of the time. In a sense the initial charges are like the opening bid, I suppose you can get more serious charges later, but they tend to be where you start off. Then you look at it again and perhaps question the eventual reliability of the witnesses – whether they will in fact stand up in court. In the heat of the moment people often make a statement and sometimes later quite wrongly they'll back off – they think of all the ramifications of being a witness ... Charges may get reduced.

(White Bail information officer, Highbury)

The case of a black defendant, aged 40, (Highbury Case no. 69) illustrates the way in which the withdrawal of original charges can effect the decision on bail. He was originally charged with two charges of Robbery, Affray, Violent Disorder, and Criminal Damage arising out of an incident at the local 'Front Line' where drug dealing was said to be rife. The defendant (protesting at the presence of a TV crew as they prepared to film in the area) was alleged to have started shouting and swearing at the crew and to have grabbed the camera tripod, knocked the camera to the ground and jumped on it, and to have produced a sharpened screwdriver. A member of the crew got out a £20 note and gave it to the defendant along with a blank film tape in response to the defendant's demands for the film shot. The damage to the camera was originally said to have amounted to £25,000. The defendant stated that he had tried to grab the camera, but denied robbery. He had many previous convictions including 3 charges of Failing to appear. The defence argued that the defendant suffered some memory loss caused by brain damage sustained in an assault which resulted in some forgetfulness about dates. He also had two outstanding cases (involving charges of Obstruct Police and Possession of Drugs – Class A – Crack cocaine) and had been refused police bail.

Following a full bail application, he was refused bail because of consideration of the gravity of the offence and his previous record. He spent four and a half weeks on remand in custody before being granted bail on the conditions of one or two sureties to total £250 (neither to be less than £100) and residence. At this stage *the two Robbery charges had been withdrawn* and the defence argued that there was no evidence to support the contention that £25,000 worth of damage in relation to the camera. The defendant was released from custody and two weeks later the *Affray charge was withdrawn and the Criminal Damage charge was reduced* to a less serious involving less than £2,000 damage – £257 – a massive reduction from the original estimate of £25,000! He pleaded guilty to the lesser Criminal Damage charge and a new charge of Threatening Behaviour s.4. He

was sentenced to 8 weeks imprisonment concurrent on each charge and given a £200 compensation order.

Therefore, the above findings concur with the quantitative findings that the risk of being remanded in custody is intrinsically linked to the type and seriousness of the most serious offence charged (Chapters 7 and 8).

The character, antecedents, associations and community ties of the defendant

If you've a bad record and it's a bad recent record, then obviously your chances of getting bail, whether you're black or white, are very much reduced.

(Black barrister, The Temple)

In addition to a 'bad' criminal history, the qualitative data also suggested that previous convictions for *certain types of offences* decreased the defendant's likelihood of obtaining bail unless suitable conditions could be offered:

I think to a large extent whether or not your client gets bail depends on his previous convictions. That does carry a lot of weight particularly if you've got convictions previously for Burglary or for Robbery. The court tends to more than likely remand your client into custody unless there's some alternative you can offer them.

(Black solicitor, Tottenham)

It was also suggested that the 'no community ties' criterion was pivotal in bail applications:

If a person is without accommodation it does pose perhaps the most serious problems, in whether a person should be granted bail or not, then we turn our thoughts to the probation service, to whether there is a possibility of a bail hostel. In my opinion the hostels are super careful about who they take into the hostel. We, of course, are very nervous of putting a person into a hostel if we think that there is a great risk of them absconding, or committing further offences from the hostel because it does not do the hostel any good, they have a difficult job.

(White Chairperson of the Lay Justices, Haringey)

and that it could be a highly contentious issue:

Quite often you'll find the police simply come along to court and say as far as we know this person has got NFA (no fixed abode), whereas you look at the back of the court and the defendants have family and friends sitting there. It's argued that they've got 'no community ties', but there are always people sitting there offering their support. Quite often they do no research and simply use that as a means of saying, 'Well, if he's not living anywhere then we can't trust him on bail'.

(Black solicitor, Tottenham)

Furthermore, even where 'community ties' are validated, bail conditions (see Chapter 10) may be imposed which black defendants may find difficult to comply with:

You hear the CPS stating that black people have 'no community ties' which often is proved wrong. On the other hand, if when that has been dealt with, I mean what is understood is that the person *does* have 'community ties', then they're given bail with conditions that cannot be met. What tends to happen is they will ask for a surety – very often a phenomenal sum – which the family or friends or whoever cannot meet, so therefore it's almost like a Catch 22 situation.

(Black female probation officer, Highbury)

The defendant's record specifically concerning bail offences

This aspect was not specifically covered in the quantitative analysis because detailed information on the defendant's criminal history was not always available (see Chapters 6 and 7). Some of the qualitative data suggested that previous bail offences were an important factor in bail decision-making:

In those cases where people are remanded in custody on the belief that they would commit further offences whilst on bail, it is usually backed up by their previous record which demonstrates that they *have* committed further offences whilst on bail ... if the information supplied demonstrates that the defendant has a bad record of offending whilst on bail, that would be a matter which would be brought to the court's attention.

(Asian Assistant Crown Prosecutor, Northern Inner London area)

The barrister confirmed the significance of a defendant's poor record in relation to bail offences:

If you've got any bail offences, if you've been shown in the past to have failed to turn up, that will appear on your record as Failure to appear. Even if you turn up the next day, if you've got the dates mixed up, or if you turn up late, you've still committed a bail offence, and if that goes down on your record, then it makes it *doubly difficult* for you to be bailed.

(Black barrister, The Temple)

The strength of the evidence

One thing the magistrates have to take into account is the strength of the evidence against the defendant ... If indeed the evidence is yet to be obtained by the police and will take some time to obtain, and if on the greater scale of things the case is not that serious, for instance, it is not a murder charge, one would tend to say, 'How much time would it take for that evidence to be obtained, is it a matter of days, weeks, months?' That must clearly have some bearing on whether it will be appropriate to have this defendant remanded in custody, pending the confirmation or the obtaining of evidence, if it is lacking from the very outset.

(Asian Assistant Crown Prosecutor, Northern Inner London area)

An example of the court's discretion on the strength of the evidence when taken into account in bail decision-making is provided from the quantitative and qualitative data from the case study on 'Jacko', aged 20 (Haringey Case No. 172). He was charged with Robbery with two co-defendants (Haringey Case nos. 171, 173). When interviewed by the police all three denied the charge. The defendant was observed on first appearance before a stipendiary magistrate where he appeared in custody having been refused police bail. The CPS objected to bail on the grounds that he would fail to surrender to custody, would commit further offences, and because of the serious robbery involved (it was alleged that the African male victim was robbed of 3 gold rings, a gold chain, a bracelet, and a watch). The defendant's previous convictions were brought to the attention of the court (1988: Robbery: conditional discharge; 1989: Burglary: probation).

All three were refused bail, the magistrate stating that in view of the defendants' records, they would re-offend, and that *the strength of the evidence* had been taken into account since the victim had identified the defendants. At the second bail application two weeks later, the defendant's solicitor argued that the evidence against him was not so

strong as that against his co-defendants, that he had fewer previous convictions, and that the outstanding case at Knightsbridge Crown Court (for which he was on unconditional bail) involved a retrial. All three defendants were again remanded in custody on the grounds of the nature and gravity of the charge, their records, and because it was feared that they may interfere with the prosecution witness.

After a further two weeks 'Jacko' was granted bail by the Crown Court but was unable to immediately comply with the conditions imposed (2 sureties at £500 each, residence, curfew 7pm–6am, and not to contact the prosecution witness). An application was made to vary the surety condition to one at £500 or 2 sureties at £250 each. This was granted – after he had spent another two weeks remanded in custody. This case was observed again when the judge was 'summing up' at the Wood Green Crown Court where all the defendants pleaded not guilty but did not give evidence. All were convicted and the defendant was sentenced to one year's imprisonment.

In the above case the identification of the defendants by the victim heightened the strength of the evidence against them, and in other cases this may also be an issue in addition to the preferred version of the facts of the case. For example, data on Highbury Case No. 69 above also raised the question of the strength of the evidence presented to the court at initial bail applications given that the original charges were drastically reduced, suggesting that the original evidence could have been weak.

These limited findings raise the question as to whether black defendants' bail prospects may also be unduly hampered if the court exercises its discretion in such a way that it is more willing to rely on weaker evidence in their cases than for their white counterparts. It is interesting to note that recent research has suggested that lack of evidence was a significant factor resulting in disproportionate acquittal rates among young black males (Mhlanga, 1997: xx; see Chapter 3).

Non-Statutory Factors in Bail Decisions

The qualitative analysis in the above section sought to gain an insight into considerations underlying the exercise of court discretion in bail decision-making in relation to the statutory criteria. In this section, from further analysis of the data, five main non-statutory factors were also identified which informants believed were influential in remand decisions as follows:

Appearing in court in custody on first appearance where police bail refused

If they come to court in custody they start with a disadvantage as far as bail is concerned, because if they've been released on bail and they come to court, you can say to the magistrate, 'Well, you can see that he can be trusted'.

(White solicitor, Stoke Newington)

Another informant was agreed with the above view and added that bail could be more problematic where the police present objections to the court:

The court tends to place a high regard by what is said by the police officer and his objections to bail, and obviously you have to cross-examine and you've got to be careful because a lot of things could come out about your client that maybe should not have come out – like he's dealt with your client before, for example ...

The thing is to ask as few questions as possible so that it is not damaging for your client.

(Black solicitor, Tottenham)

CPS reliance on information supplied by the police

On overnight matters we are very much reliant on what information is given to us by the police. The over-night cases – by their very nature – are such that the police are not able to get all the information or perhaps fail to check all the information they have provided. But having said that, we as Crown Prosecutors do have an obligation to come to an objective view ourselves.

... There are occasions when perhaps the information provided has not been as carefully checked out as it should have been, and that becomes pretty apparent the minute one hears from the defence. The magistrates are usually alive when things like that happen. So I do not think that one can say that a defendant will

necessarily be unfairly prejudiced by that inaccurate information. I would not say this happens frequently; it does happen occasionally, mistakes do occur.

(Asian Assistant Crown Branch Prosecutor, Northern Inner London area)

Information supplied to the CPS by the police may be supplemented by details provided in the Bail information officer's report:

We look at the information he has supplied and we will see whether indeed there is anything contained in that report that will make us review our position in relation to what objections we are making in relation to bail, or whether indeed conditions that may be suggested by the Bail information officer could not possibly meet whatever objections we have.

(Asian Assistant Crown Branch Prosecutor, Northern Inner London area)

The operation of a Bail information scheme at Highbury could *partly* explain why, overall, remand in custody rates were *lower* than at Haringey where no scheme was in existence. In terms of 'race', although the rate of remands in custody for black defendants was greater than white defendants in the same proportion at both courts, both black *and* white defendants fared better at being granted bail at Highbury, although the position was slightly worse for the former (Chapter 7).

The quality of legal representation

One is very much influenced, of course, by the oratory of the counsel or solicitor that is hopefully appearing for the person, or the duty solicitor ... Without a doubt the quality of the application by counsel, or a solicitor plays a very important part, it must do, because they pack more information in and they can perhaps be more persuasive.

(White Chairperson to the Lay Justices, Haringey)

The court clerk agreed with the magistrate that the calibre of the legal representative's presentation in court was of prime importance at bail applications:

I tend to find in experience, is that it depends upon the advocacy of the solicitor involved, and what the particular defendant can offer by way of conditions as to whether or not he goes in custody, or gets bail.

(White Court Clerk, Haringey)

The legal representative's powers of negotiation were also considered to be of consequence:

Quite often you can negotiate beforehand with the prosecution and fix certain conditions, which if your client is able to comply with then he's going to be granted bail ... it's always easier if there's no fight because the bench does tend to place a lot of weight on what is said by the prosecution.

(Black solicitor, Tottenham)

A probation officer *strongly criticised some solicitors* for what she felt was a lack of commitment to black defendants in some instances:

On occasion I've noticed the same solicitor representing two different people who has fought for bail for one, and, although asking for it, not putting any effort into really obtaining bail for another individual. I mean that solicitors sometimes don't seem to fight so hard for bail when it's a black defendant.

(Black female probation officer, Highbury)

A defendant had felt strongly that his solicitor had been negative towards him in relation to a bail application:

I was upset! I had a go at my solicitor because it seemed like he didn't care. I asked him to get me bail. I didn't want to stay in there for a year, but he told me a lot of rubbish and I didn't get bail – that is when I sacked him.

(Black defendant, aged 20, Haringey Case No. 173)

One of the probation officers also commented on black defendants' dissatisfaction with the service provided by solicitors when bail applications failed:

Sometimes they feel that they want to change solicitor and go back up to court.

(Black female probation officer, Highbury)

Therefore, such perceptions provide a crucial insight into how the quality of legal representation can be an important factor effecting bail decisions. Again it is one of such

factors that are not amenable to and are overlooked by quantitative research (see Chapter 6).

Composition of the bench and area of the court

A lot depends on the bench you come before. Quite often you can look at the chairman and know whether or not your client is likely to get bail for the type of offence you come before him for.

(Black solicitor, Tottenham)

The composition of the bench can effect the likelihood of favourable outcomes:

If you come up in court it's not justice it's a lottery, it all depends on who you're who you're going to be in front of. For the same offence you can get a conditional discharge in front of someone and you will be sent down in front of someone else and that's not justice. And that's why the young blacks in the main come out with a sense of injustice. They don't feel they're getting a fair shake from the system. It's no wonder they are not in tune with society ... There are certain magistrates who are very definitely prejudiced and that is a major problem.

(White solicitor, Stoke Newington)

Black defendants may also receive particularly harsh treatment in bail decisions in areas with a low proportion of black people:

My experience has varied depending on the area the bail application has been made in. It's quite often more difficult to secure bail for a black defendant in a provincial one-horse town, in the areas where they don't see a lot of black people. Benches in those areas go by the stereotypes they know about, and it's always uphill when you appear in front of that sort of bench.

(Black barrister, The Temple)

Thus it appears that in addition to the operation of discretion in remand decisions in relation to legal factors, non-statutory factors such as the range of information supplied to the CPS, the quality of legal representation, the composition of the bench and court venue can all be particularly problematic in relation to black defendants' bail applications.

Racism Versus the ‘Colour-Blind’ Approach to Criminal Justice

In this section the analysis suggests that the experience of defendants and probation officers was that harsher outcomes for black people in the criminal justice system were largely the result of discriminatory practices underpinned by racism. Agencies of the court – the CPS representative, magistrate, and court clerk – were, however, unanimously opposed to such a view.

A probation officer observed that some black defendants who had been refused bail directly attributed their plight to *racism within the magistracy*:

When I go down to the cells to see defendants who have been remanded in custody, sometimes they get very angry and would refer to the magistrate as unfair and racist. They criticise the magistrate immensely.

(Black female probation officer, Highbury)

Irrespective of key relevant factors, the other black probation officer felt that black defendants would face harsher outcomes in bail and sentencing than white defendants:

It seems to me that black defendants, regardless of whether they’ve got a bail address and regardless of the nature of the actual offence, would most likely be remanded in custody – even if solicitors do make a very good case for bail. In terms of looking at white people, they would most likely be given bail without such a strong case – I can’t say to what extent, but it certainly does happen. It wouldn’t be right of me to say *all* magistrates have the intention to remand black offenders into custody simply because they’re black. The racist element *is* a part of it, but some they could allow bail and some they don’t, so there are lots of reasons behind it. Certainly the racist element is a part of the reason.

I mean it’s difficult because one has to be realistic as a probation officer. If you write reports, if an offence is very serious – that person is going down. If the added element is that they’re black, unfortunately, they’ll probably get maybe an extra year or an extra six months, so there’s that added element in terms of serious offences.

(Black female probation officer, Haringey)

A defendant put forward a strong opinion on the underlying reasons why, in a society with a history of slavery and a contemporary racist ideology, black people were over-represented in courts and in remand prisons:

Going back to the past, they have got in their heads that they are over us and we are under them. They would like to see us back in a ball and chain ... that's their way. So really we are falling into that trap neatly, getting involved [in the criminal justice process] ... Once they have got you into that trap they are going to keep you down, and soon after a while they throw away the key quicker still. That's why they got these courts. They know there are a lot of black people in this country. When they see a black person in the court they love it, it gives them a boost, you know.

(Black defendant, Haringey Case No. 171)

A probation officer agreed that the over-institutionalization of black people was linked to historical factors, contemporary racism, *and* social control strategies:

The ideology of society says, 'If we can control black people at least we know where they are, we know what they're doing, and there's less of them on the street'. There are all those reasons, but you'd be wrong to say that those are the only reasons. But certainly, incarceration, controlling, *social control* is involved.

Maybe they see black people as inferior beings that need to be controlled, that are outrageous and wild, and need that kind of control because they don't know what's good for themselves. So we strip their liberties, you know, it's almost back to slavery, a very subtle form of slavery. Because if you look into institutions, mental institutions, prisons – that's where they [black people] all are. So, therefore, it *is* a form of slavery, but it's very subtle.

(Black female probation officer, Haringey)

She then referred to the ambivalent position of being a black person working 'in the system':

I think certainly being a black officer within this area has helped as we do have a high ratio of clients that are black. For a start when they come in and see a black face they feel automatically at ease, a little bit more comfortable...Being black living in a society that is predominantly racist – and the criminal justice system which is a part of that society – I can understand what they're going through ... Sometimes there are difficulties regarding where you actually stand – you're in the system – there is that dilemma especially if you *work* for the system.

(Black female probation officer, Haringey)

A senior officer acknowledged the existence of racism and the need for local information:

We recognise there is racism in all aspects of the criminal justice system...we sought funding for the Black offender project which was to look at the service that the probation service offers to black offenders. You need some very detailed local information ... Nationally we know there are a lot more black offenders, we know all that, but interestingly it may be that there's a slightly different picture here and that doesn't mean we haven't got a problem – we *have* got a problem.

(White female Assistant Chief Probation Officer, Highbury)

The above views put racism centre-stage in a criminal justice arena. In direct contrast the views of some court officials deny its centrality and downplay its existence. Essentially these officials endorse a 'colour-blind' approach which purports that defendants are not distinguished on the basis of colour or 'race'. For example, the Assistant Crown Prosecutor was adamant that all defendants were treated equally by the CPS:

We would apply the *Code [for Crown Prosecutors]* to whichever defendant without any regard to race or gender, we do not take account of the ethnic background of defendants. We are meant to treat everyone the same ... I think you will not find any Crown Prosecutor basing his bail objections on the ethnic origin of the defendant. It would be wrong to do so, and I cannot say that I have come across any here that would do that. We are and *must* be guided strictly by the evidential criteria and by the *Code* [CPS, 1992].

(Asian Assistant Crown Prosecutor, Northern Inner London area)

The 'colour-blind' stance was also taken by the magistrate, who nevertheless admitted that in some instances prejudice on the bench may exist:

I try not to see race. I have been fortunate, in fact, to employ (as a partner in a firm of architects) a very large number of people who come from various ethnic countries. My last three secretaries over the 20 years have all been West Indian girls – absolutely brilliant. I like to think that I don't see race, but I would be a fool to say that that is a fact because we must all see it, you can't help but see it, you just have to recognize it and then set it aside.

I feel sure, that I and the majority of my colleagues here do not discriminate against the ethnic population. I base that on my experience. Of course, you will find an odd person who has a particular prejudice, but all magistrates – and there are 127 here in Haringey – cannot all be equal, nor can everybody in the country be equal in their thoughts and opinions.

(White Chairperson of Lay Justices, Haringey)

The court clerk asserted that any magistrates who stated that bail decisions were based on racial grounds would be reported:

If any of the clerks here were to hear any magistrates indicate that they were basing their decision purely on the defendant's race, we would immediately report it through the Chief Clerk to the Chairman of Lay Justices knowing that he personally would not take those views and that as Chairman we would hope he would do something about it. All the clerks here are very quick to report anything like that if we heard it, but I mean we don't hear it. Whether they have it in the back of their minds, I don't know, but we certainly wouldn't hear it.

(White Court Clerk, Haringey)

It is interesting to note that whilst the CPS and the magistrate clearly reject the notion that racism effects court decision-making, both the latter and the court clerk take pains to acknowledge the fact that what is in the minds of magistrates when reaching decisions cannot be determined. If negative stereotyping and racial prejudice *is* in the minds of magistrates or the CPS when vital decisions are made, black defendants' treatment may be adversely effected, especially when such detrimental thoughts can be transferred into action by means of the unfavourable exercise of discretion.

Chapter 10

Bail Conditions

Afro-Caribbean defendants placed on bail had conditions imposed as to their movements more frequently than did white defendants ... It seems that their very presence is considered to be suggestive of impending criminality.

(Shallice and Gordon, 1990: 19, 31)

Introduction

This chapter examines the proposition that bail conditions for black defendants are more severe than for white defendants. It draws upon both quantitative *and* qualitative measures. Given that statistically meaningful results are more likely to be obtained from large samples, the quantitative analysis is derived from the combined data from both courts. At the outset of the statistical analysis, it was found that defendants were in one of the following categories:

- 1 granted conditional bail on first appearance and *not* subsequently remanded in custody;
- 2 granted unconditional bail on first appearance and *not* subsequently remanded in custody during the time that the case was observed;
- 3 remanded in custody throughout the time that the case was observed;
- 4 remanded in custody but subsequently granted conditional bail; or
- 5 granted conditional bail on first appearance but subsequently remanded in custody (see Table 10.1).

The question of the impact of *individual* bail conditions is raised through qualitative analysis derived from data from 10 semi-structured interviews with a representative sample of persons involved in the criminal justice process (see Chapter 6). The officials' perceptions gave a useful insight into the reasoning behind the imposition of certain

conditions of bail, whilst defendants' perceptions were able to reflect the experience of those at the receiving end. With the exception of Shallice and Gordon (1990) and IRR (1979) (see Chapter 5) previous research has not addressed issues relating to bail conditions and 'race'.

The severity rating of bail conditions was divided into 3 levels – low, medium, or high – as set out below. It was originally thought that multiple regression analysis might provide some useful results, but this was not possible because of the large number of zero values for bail conditions in the data. From 463 cases in the combined sample, just over half (52 per cent) of all defendants had no bail conditions imposed at all: they were *either* granted unconditional bail *or* remanded in custody during the time the case was observed.

Owing to this difficulty, it was not possible to analyse severity of bail conditions with the same statistical sophistication as that applied to remands in custody (see Chapter 8). As such there was an over-riding limitation on the testing of the hypothesis 'that bail conditions for black defendants are more severe than for comparable white defendants' (see Chapter 6). Notwithstanding this drawback, an analysis of data by the use of crosstabulation tables in relation to the SEVERITY RATING OF BAIL CONDITIONS variable was able to provide some insight into the differential severity of bail as applied to black and white defendants,

The Quantitative Analysis

The order of severity of bail conditions and their respective scores was derived from ranking the various bail conditions according to the opinion of a Panel of Experts (see Chapter 6) as follows:

- | | | |
|----|--------|--|
| | 0.00 : | none/not applicable |
| 1) | 2.33 : | to give prior notice of any change of address |
| 2) | 3.00 : | not to apply for passport |
| 3) | 3.58 : | avoidance of person |
| 4) | 4.92 : | passport to be surrendered to/retained by police |
| 5) | 5.50 : | residence |

- | | | | |
|-----|-------|---|---|
| 6) | 5.92 | : | avoidance of place (save to see solicitor
by prior written appointment/attend court) |
| 7) | 6.75 | : | avoidance of place (other) |
| 8) | 7.42 | : | not to drive/sit in front seat of car |
| 9) | 8.17 | : | reporting to police station – weekly |
| 10) | 10.17 | : | reporting to police station – twice weekly |
| 11) | 11.92 | : | surety |
| 12) | 12.08 | : | bail hostel |
| 13) | 12.50 | : | security |
| 14) | 12.75 | : | curfew |
| 15) | 13.00 | : | reporting to police station – daily |

For example, a defendant with one condition of ‘residence’ was recorded as having a severity score of 5.50. Where two or more bail conditions were imposed, the individual scores were added together: a condition of ‘residence’ *and* ‘reporting to the police station – weekly’ was recorded as 13.67 (5.50 plus 8.17).

Defendants were recorded as 0.00 (none – granted unconditional bail *or* remanded in custody during the time the case was observed) or as in one of the following ‘severity levels’:

Low	= 2.33–8.16
Medium	= 8.17–13.00
High	= 13.01–60.93

Defendants with severity scores of 8.16 or less were in the Low severity level which means that the bail condition(s) imposed was one out of categories 1)–3), 6)–8), 12) or 15) above, or a combination of two of these (provided that the total score did not exceed 8.16). Conditions in this Low severity level did not restrict the liberty of, nor require the defendant to comply with a condition as severe as in Medium severity level with severity scores of 8.17–13.00 or less with one bail condition out of 4)–5), 9)–11), or 13)–14) above or a combination of two or three conditions (provided that the total score did not exceed 13.00). Defendants with severity scores of 13.01–60.93 were classified in the High severity level with a *combination* of bail conditions imposed from 1)–15) above, not exceeding 60.93 (the highest score observed).

Table 10.1: Bail status of combined defendants by race (RIC= remanded in custody)

	Race							
	Black			White			Totals	
Bail status		Col%	Row%		Col%	Row%		Col% Row%
1) Granted conditional bail on first appearance and <i>not</i> subsequently RIC	99	(42.9)	(49.5)	101	(43.5)	(50.5)	200	(43.2) (100.0)
2) Granted unconditional bail on first appearance and <i>not</i> subsequently RIC	79	(34.2)	(47.0)	89	(38.4)	(53.0)	168	(36.3) (100.0)
3) RIC throughout the case	35	(15.2)	(48.6)	37	(15.9)	(51.4)	72	(15.5) (100.0)
4) RIC but subsequently granted conditional bail	16	(6.9)	(76.2)	5	(2.2)	(23.8)	21	(4.5) (100.0)
5) Granted conditional bail but subsequently RIC	2	(0.8)	(100.0)	0		-	2	(0.4) (100.0)
Totals	231	(100.0)	(49.9)	232	232(100.0)	(50.1)	463	(100.0) (100.0)

Overall, just under half, 48 per cent, of all defendants were granted *conditional bail* at some point in the proceedings as follows:

- 1 43 per cent were granted conditional bail on first appearance and *not* subsequently remanded in custody;
- 2 5 per cent were remanded in custody but subsequently granted conditional bail; and
- 3 0.4 per cent (2 cases only) were granted conditional bail but subsequently remanded in custody.

Out of the remainder, comprising just over half, 52 per cent, of all defendants:

- 4 36 per cent, were granted *unconditional bail* on first appearance; and
- 5 16 per cent, were *remanded in custody* throughout the time that the case was observed (Table 10.1).

Table 10.1 shows a breakdown of the above figures in terms of 'race' and develops further the analysis of remand decisions set out in Chapter 7 which made no distinction between defendants remanded in custody throughout the time that the case was observed, and those remanded in custody but granted conditional bail at some point in the proceedings. As had been found previously (Table 7.1), the *overall* rate of remands in custody was 5 per cent higher for black defendants as compared to white defendants, but taking into account rates of conditional bail, it emerged that there was little difference in terms of 'race' in defendants remanded in custody throughout the time that the case was observed. However, 6 per cent more black defendants than white defendants were granted conditional bail either prior to or subsequent to being remanded in custody (Table 10.1).

The association between SEVERITY RATING OF BAIL CONDITIONS and RACE was *statistically significant* with *less* than the expected frequency of black defendants with no bail conditions (*either* granted unconditional bail *or* remanded in custody throughout the case) and in the Low and Medium severity levels, whereas the reverse was the case for white defendants. However, there was *much more* than the expected frequency of black defendants in the High severity level, whereas the position was again reversed for white

defendants. Without distinguishing between defendants granted conditional bail on first appearance and not remanded in custody, and those remanded in custody but conditional granted bail at some time during the case, just over one and a half times the proportion of black defendants were in the High severity level than white defendants.

Defendants not remanded in custody during the case

There was little difference in terms of 'race' among defendants granted *unconditional* bail on first appearance and *not* remanded in custody throughout the time the case was observed (only 1 per cent more white defendants than black defendants). However, there was some difference in relation to defendants granted *conditional bail* and *not* remanded in custody throughout the time the case was observed: 11 per cent more white defendants than black defendants. Overall, out of defendants *not* remanded in custody, therefore, black defendants were *slightly less likely* to be granted unconditional bail than white defendants, and *less likely* to be granted conditional bail, this difference reaching statistical significance (Table 10.2).

In relation to defendants granted bail on first appearance and *not* remanded in custody throughout the time the case was observed, *less* than the expected frequency of black defendants were granted unconditional bail, and in the Low and Medium severity levels, whereas the reverse was the case for white defendants. This was in contrast to the High severity level where there was *much more* than the expected frequency of black defendants, whereas the position was again reversed for white defendants. Therefore, given these findings, there is evidence that the proposition that bail conditions for black defendants are more severe than for white defendants can be refuted in the case of defendants granted conditional bail on first appearance.

Table 10.2: Combined defendants: proportion granted bail by severity rating of bail conditions by race

	Race					
	Black		Total	White		Total
	granted bail		black	granted bail		white
Severity level	Row %			Row %		
None	79	(69.3)	114	89	(70.6)	126
Low	25	(89.3)	28	35	(100.0)	35
Medium	14	(87.5)	16	29	(96.7)	30
High	60	(82.5)	73	37	(90.3)	41
Totals	178	(77.1)	231	190	(81.9)	232

Table 10.3: Combined defendants: proportion remanded in custody by severity rating of bail conditions by race

	Race					
	Black		Total	White		Total
	remanded in custody		black	remanded in custody		white
Severity level	Row %			Row %		
None	35	(30.7)	114	37	(29.4)	126
Low	3	(10.7)	28	0	(0.0)	35
Medium	2	(12.5)	16	1	(3.3)	30
High	13	(17.8)	73	4	(9.8)	41
Totals	53	(22.9)	231	42	(18.1)	232

Table 10.4: Combined defendants: proportion in High severity level by age group by race

	Race					
	Black in High severity level		Total black	White in High severity level		Total white
Agegroup	Row %			Row %		
Under 26	46	(36.2)	127	21	(18.9)	111
26 and over	27	(26.0)	104	20	(16.5)	121
Totals	73	(31.6)	231	41	(17.6)	232

Table 10.5: Combined defendants: proportion in High severity level by most serious charge by race

	Race					
	Black		Total		White	
	in		black		in	Total
	High severity				High severity	white
	level				level	
Most serious charge		Row %			Row %	
Serious violence and other grave crimes	10	(47.6)	21	3	(18.8)	16
Blackmail/ Robbery/ Kidnapping	10	(41.7)	24	1	(20.0)	5
Supplying drugs	7	(38.9)	18	3	(50.0)	6
Sexual offences	2	(50.0)	4	1	(50.0)	2
GBH s.20	1	(25.0)	4	0	-	2
Public disorder	14	(32.6)	43	3	(7.1)	42
Household Burglaries	7	(31.8)	22	5	(26.3)	19
Other burglaries/ Theft	13	(36.1)	36	13	(19.7)	66
Fraud and Handling	5	(35.7)	14	7	(25.9)	27
Minor violence	4	(14.8)	27	4	(12.9)	31
Other offences	0	-	18	1	(6.3)	16
Totals	73	(31.6)	231	41	(17.7)	232

Defendants remanded in custody at some time during the case

Out of defendants remanded in custody at some time during the case, *all* defendants were *initially remanded in custody* but *subsequently granted conditional bail* with the exception of the following 2 cases:

- Black defendant, aged 25 (Highbury case no. 173), charged with Household burglary, was granted bail with conditions of 'residence' and 'curfew' (High severity level score 18.25) but subsequently re-appeared charged with Breaching bail conditions – then remanded in custody.
- Black defendant, aged 25 (Haringey case no. 163) charged with ABH, was granted bail with conditions of 'avoidance of person', 'residence', and 'surety' (High severity level score 21.00) but subsequently re-appeared charged with Robbery – then remanded in custody.

There was little difference in terms of 'race' among defendants remanded in custody who were *not* subsequently granted bail (only 1 per cent more black defendants than white defendants). Taking into account the above two exceptional cases, it emerged that there was some difference in relation to defendants initially remanded in custody but subsequently granted conditional bail: 5 per cent more black defendants than white defendants. Overall, therefore, it was found that black defendants were *slightly more likely* than white defendants to be remanded in custody and *not* subsequently granted bail, and *more likely* to be initially remanded in custody but subsequently granted conditional bail, although this difference failed to reach statistical significance (Table 10.3).

Again taking into account the above two exceptional cases, out of defendants initially remanded in custody but subsequently granted conditional bail, there were 11, 9 and 5 per cent more black defendants than white defendants respectively in severity levels 1–3, although small figures were produced in severity levels 1–2 (Table 10.3). This suggests that a 'knock-on' effect of black defendants being *initially* remanded in custody at a higher rate than white defendants was an increased likelihood of more severe bail conditions being imposed *subsequently*. Therefore, it appears that the proposition that bail conditions

for black defendants are more severe than for white defendants can be supported particularly in the case of defendants are refused bail on first appearance but are then subsequently granted conditional bail.

Age

The following analysis addresses the severity rating of bail conditions when age and most serious charge are taken into account. Owing to the production of small figures, no distinction is made between defendants granted conditional bail on first appearance and not remanded in custody and those remanded in custody but conditional granted bail at some time during the case. When re-coded to only 2 categories of under 26 years and 26 years and over, the association between SEVERITY RATING OF BAIL CONDITIONS and RACE was *statistically significant* in relation to defendants aged under 26 years. More than the expected frequency of black defendants were in the High severity level in relation to both age groups, however, this was particularly marked in the case of *young* black defendants.

Almost twice the proportion of black defendants under 26 had high severity level bail conditions imposed as compared to white defendants in this age group. A higher proportion of black defendants aged 26 and over also had high severity level bail conditions imposed (10 per cent more than white defendants), but the difference was not so marked as in the younger age group (Table 10.4). Nevertheless, out of defendants in the high severity level, an association between AGEGROUP and RACE failed to reach statistical significance.

Most serious charge

The association between SEVERITY RATING OF BAIL CONDITIONS and RACE was only *statistically significant* in relation to defendants whose most serious charge

involved a Public disorder offence. 45 per cent of all defendants charged with such an offence and granted conditional bail were in the High severity level, where there was more than the expected frequency of black defendants.

Where high severity level bail conditions were imposed there was some difference in terms of ‘race’ according to the type of most serious charge in all offence categories save for Sexual offences. Black defendants had high level severity conditions imposed at a *higher* rate than white defendants in 8 out of the 11 offence groups as follows:

Serious violence and other grave crimes	: 29 per cent more black defendants;
Public disorder:	: 26 per cent more black defendants;
GBH s.20:	: 25 per cent more black defendants;
Blackmail/ Robbery/ Kidnapping	: 22 per cent more black defendants;
Other burglaries/Theft	: 16 per cent more black defendants;
Fraud and handling	: 10 per cent more black defendants;
Household burglaries	: 6 per cent more black defendants;
Minor violence	: 2 per cent more black defendants.

Black defendants had high level severity conditions imposed at a *lower* rate than white defendants in 2 out of the 11 offence groups as follows:

Supplying drugs	: 11 per cent more white defendants;
Other offences	: 6 per cent more white defendants.

Therefore, black defendants appear *much more likely* to have high severity level bail conditions imposed where the most serious charge involved serious violence or a threat to the public order, and *more likely*, but to a lesser extent, to have high severity level bail conditions imposed where the most serious charge involved a property offence (Table 10.5).

Such analysis shows that, overall, the proposition that bail conditions for black defendants are more severe than for white defendants has some statistical basis. However, when a distinction is made between defendants granted conditional bail on first appearance and not remanded in custody, and those remanded in custody but conditional granted bail at some time during the case, the above proposition is only supported in relation to the

latter. Furthermore, when age is taken into account, the proposition is clearly supported in the case of *young* black defendants, particularly when most serious charge was taken into account, and in the case of *all* black defendants when that most serious charge involves serious violence, a threat to the public order, or a property offence.

The Qualitative Data

Qualitative analysis enabled the question of the impact of *individual* bail conditions to be considered. Bail conditions fall into two main categories:

- 1 conditions that must be complied with by the defendant prior to release on bail: passport to be surrendered to/retained by police, surety, acceptance into a bail hostel, and security, and
- 2 conditions that must be complied with after release on bail: to give prior notice to police of any change of address, not to apply for passport, avoidance of person or place, residence, not to drive/sit in front seat of car, reporting to police station and curfew.

If found not to comply with the second category of conditions, the defendant may be brought back before the court on a charge of Breach of bail conditions. If this is proved, the defendant may be remanded in custody; have conditions varied; or warned by the court not to breach the existing conditions and released on bail again on the same conditions. In relation to this category of bail conditions, there is no comprehensive means by which defendants' compliance to some of the conditions can be checked or enforced. In some instances spot checks may be made by the police at the defendant's home to determine if conditions of residence or curfew are being complied with, but it is obvious that this method of checking up on the defendant is limited. In relation to this deficiency there have been attempts to implement electronic monitoring of defendants (see, for example, Mair and Nee, 1990).

The police may take action if they observe or receive reports that the defendant has contacted a person or attended a place he/she has been ordered to avoid, or driving/siting in

the front seat of a car when ordered not to do so. A defendant failing to report to the police station as prescribed is easier to detect since records at the police station will show this. Sometimes ways around the condition 'not to apply for a passport' may be found, for example, the defendant may use a false identity to apply for a passport, or travel to a place where full passport documents are not required. It was with reference to these apparent deficiencies in bail conditions that a magistrate commented:

Stringent conditions on bail are, of course, only as good as the person is prepared to observe them.

(White Chairperson of Lay Justices, Haringey)

The only two bail conditions classified in the quantitative research in the Low severity level included below are 'passport to be surrendered to/retained by police' and 'residence'; the remainder were all classified in the High severity level.

Surrendering passports

In some cases defendants leave the jurisdiction in spite of having a condition of bail prohibiting them from doing so. The CPS representative took the view that such a condition of bail was virtually useless:

If someone is determined to go they will go.

(Asian Assistant Branch Prosecutor, Northern Inner London area)

The magistrate was also of the opinion that the imposition of this condition was somewhat futile, and that in serious cases where such a condition was considered by the court the defendant should be remanded in custody:

Surrendering passports, quite frankly, in my opinion, is not all that wonderful and it doesn't happen very often anyway because a person can then get a second passport. You can make a condition he won't apply for one, but if he really

wanted to get out of the country, he only has to apply and get a short stay one and he is away. So if it is a very, very serious case then I think that person is better to be in custody.

(White Chairperson to the Lay Justices, Haringey)

Curfews, reporting to the police station and residence

The magistrate felt that the imposition of a condition of curfew may be particularly appropriate for *young* defendants:

We can curfew people. We find that to be a very good condition, especially if people are committing offences through the hours of darkness. We think sometimes with young offenders, it is helpful to the families in which they live to have a condition imposed upon them, whereby the family can say, 'Well you know you have got to be at home at night'. Well, at least that is what we would like to feel – that it is a useful condition to impose.

(White Chairperson to the Lay Justices, Haringey)

One possible discriminatory practice raised in the qualitative data was the suggestion that black defendants may have a curfew imposed more frequently than their white counterparts and that there was a punitive element involved in the imposition of curfews or reporting conditions. For example, one probation officer observed:

I've noticed curfew or reporting to the police station is a grave attack on people's liberties before they've actually been dealt with in court -you know, 'innocent until proven guilty' – but they're almost guilty before it's proven. They're being punished in that way. They put curfews on a lot of English people as well, but I would say more so on black people.

(Black female probation officer, Haringey)

Another probation officer agreed that young people from minority ethnic groups were more likely to have conditions of curfew or residence imposed:

Young Irish people and young black people, and also young Asian people, are probably far more likely if they're granted bail, to get conditions of bail, such as curfews and residence, as a means of curtailing their activities. There's an

impression given in the court I think – that we want these people off the streets. It's anecdotal – I've got no statistics to back that up – but I think that's what my experience tells me.

(White probation officer, Highbury)

A case study involving six young black defendants (Highbury Case nos. 165–170) illustrates the points raised by the magistrate above that curfews may be imposed, particularly on young defendants and where the offence was allegedly committed 'through the hours of darkness', and also those of the probation officers above that curfews are imposed more readily on black defendants – possibly for punitive reasons. The defendants, aged 17–21, were charged with various Public disorder offences including affray, obstructing a police officer, and threatening words and behaviour. One defendant was also charged with Attempted GBH and three defendants had Violent disorder withdrawn. This case attracted some attention from the media, for example, one newspaper reported the incident as follows:

A minor argument in an east London bagel shop early yesterday turned into a half-hour street battle between around 150 youths and police in which 12 officers were injured. A scuffle broke out at the popular 24-hour Ridley Road Bagel Bakery in Dalston at around 2.30 am ... "There was some pushing in the shop and a glass was broken," said a spokeswoman for the bakery. When the police arrived the crowd turned on them, throwing bottles and glasses.

(*The Guardian*, 7 April 1992)

All defendants were refused police bail. On first appearance they were granted bail with a condition of curfew 10pm–7am, not to go within half a mile of the place where the offence was alleged to have been committed, and residence. The stipendiary magistrate stated that the exception to the right to unconditional bail was to 'avert further offences' (the legal criterion 'belief would commit offence on bail'). The reason for his finding an exception to the defendant's right to unconditional bail was 'the gross nature of the allegation' ('nature and gravity of the offence'). At the second hearing before another

stipendiary three weeks later, all defendants requested that the conditions of bail should be varied so that the curfew condition no longer applied. The court ordered that the curfew should be dropped but that the other conditions should remain.

When spoken to informally after the second hearing, a barrister representing one of the defendants commented that he felt that the curfew condition had been too onerous when the nature of the charges was taken into account, and that it appeared to him as if it had been imposed in a punitive manner 'setting the young defendants up to fail'. Four of the defendants were committed to Snaresbrook Crown Court for trial, and two charged with less serious offences (Obstructing police and Threatening words and behaviour) had their cases adjourned for summary trial.

In another case, a young black defendant with several previous convictions charged with [street] Robbery also intimated that in his opinion a curfew condition was unduly onerous in his case:

At my age I think it [the curfew condition] is a bit strong, but I have had a curfew before for a burglary charge.

(Black defendant, aged 21, Highbury Case No. 116).

When it was put to the CPS representative that research by the Runnymede Trust (Shallice and Gordon, 1990) had suggested that onerous conditions are often imposed by the court in the case of young black defendants, and that the Bagel Bar case referred above was an example of the unduly onerous imposition of a curfew condition, he stated:

I cannot comment on individual cases. What I would say is that generally I am not aware of a curfew condition being sought by the prosecution on an ethnic basis. I am aware in burglary cases where there is a night time burglary, sometimes the curfew is suggested whether they are black or white, and I have seen it imposed whether they are black or white. Sometimes the prosecution asks for it after looking at the defendant's modus operandi – if he has previous for night-time burglary...So it very much depends on the circumstances...My perception is not that black defendants are singled out for curfew conditions or conditions generally.

(Asian Assistant Branch Crown Prosecutor, Northern Inner London area)

Although in the quantitative analysis, reporting to the police station was classified as a High level severity bail condition, the impression from some of the qualitative data was that it was not regarded as a particularly severe condition. Moreover, the magistrate was of the opinion that a reporting condition was rather inconvenient from an *administrative* point of view:

You can order reporting daily or less frequently at the police station. But that is now not considered a very suitable condition, because by experience, it has ended up with large numbers of people all appearing at the police station throughout the day, and at particular times before and after work, and things like that. That's not very good, nor is it very comfortable for the people of the community who have to attend the police station for other reasons that they need to attend to, and perhaps having to find an army of people waiting to report. It causes a little bit of friction, it puts all these people together, and at the end of the day, really, what does it achieve? So reporting now is infrequently imposed, I would suggest.

(White Chairperson to the Lay Justices, Haringey)

A black defendant charged with Robbery (Haringey Case no 171) was refused bail on first appearance before a stipendiary, but after 13 days on remand in custody was granted bail by the Crown Court on the following conditions: reporting to police-twice weekly (Wednesday and Saturday 6–8pm), residence, surety (£500), and not to interfere with a prosecution witness:

Reporting twice a week is a bit irritating sometimes, but I am used to it, you get into a routine you know. It is not too much of a problem, I have my freedom back, that is the main thing. If they thought I was a hardened criminal they wouldn't really give me bail. The way I see it they have given me a chance to prove myself, to prove my innocence. Even if they find me guilty on the day, it's a true stitch up I'd have a better chance if I have something to like back it up with a job, references, you know.

(Black defendant, aged 24, Haringey Case No. 171)

Another black defendant agreed that his reporting condition (daily 6–8pm) was irritating. He went on to state that he was used to it as some of his previous cases had involved reporting conditions to the extent that he had been regularly reporting to the police station over a protracted period of time:

It is just annoying. I'm in there signing on and there is about 7 black men all signing on at the same time. I can't really go nowhere, I can't say I am going out early morning to come back at the end of the day because I have to be here at certain times to sign on. I am used to it now, I've been in the police station every single day for nearly 2 years. It is just something you start to accept, whether it is right or wrong you just start to accept it.

(Black defendant, aged 21, Highbury Case No. 116)

Sureties

Although both black and white defendants from disadvantaged backgrounds may find it difficult to find a surety, *black* defendants may be in particularly unfavourable circumstances owing to the limited socio-economic position of the black community as a whole. If the court sees fit to impose a surety, technically bail has been granted, but if the figure required cannot be met then the defendant is retained in custody:

Most of the people I represent, I represent under Legal Aid orders...I have been involved in cases where the levels of suretyship have been set so high that it's tantamount to denying bail because there's no way that the individuals concerned can contact anybody with the sort the money that the court wants to see...If you haven't got the money, if you're not worth that money, you don't own your own house, or you haven't got a substantial bank account, you're not in a position to stand surety.

(Black barrister, The Temple)

In some cases, defendants may make a successful application to the court to decrease the surety from the original sum stipulated:

When I went to court they said I had bail but I had to wait for the surety. I was granted bail on 4 June, my solicitor went to Judge in Chambers (Crown Court)

and I got bail with a condition of surety for £1,000, curfew from 7pm–6am, and residence at my sister's place. What happened was that I was granted a surety for £1,000 by a Judge in Chambers but I couldn't raise it. When we came back to the Magistrates' Court on 27 June, my solicitor said I could produce a surety but only for £500. The court accepted this. My mum sent the money from Jamaica but my uncle stood surety.

(Black defendant, aged 20, Haringey Case No. 172)

A solicitor explained how some of his clients were granted bail with a condition of surety but had not been released since the sum could not be met:

I've got a couple of people at the moment who are in custody for want of sureties and the court says, 'Right this is the offence. this is the level of surety that I want', and I argue until I'm blue in the face that, 'Well, it is one thing to say that he should be out on bail with suitable safeguards, but there's no way he can get them' – so as far as the court is concerned it is consigning him to custody. The magistrates say, 'We've given him bail, if he can't meet the sureties that's not our problem'. It's again another of those things which is, if you like, indirect discrimination. This is because in the social milieu that a lot of them are in, they are not going to know people with money, or if they do it's not always in the form that the court would like: it's hanging around their neck or their wrist and it's not in building society accounts – so again it's an indirect discrimination.

It's staggering when large amounts of cash are produced in court by people offering to stand as a surety and they are rejected by the court...The logic for it I would assume is that the court says, 'Someone's probably given you that,' – which is something of an insult really – 'someone must have given it to you and therefore we're not going to accept it because it is probably not your money' – and therefore someone is guilty of indemnifying a surety which is an offence. It's another form of discrimination, albeit indirect.

(White solicitor, Stoke Newington)

The case of a black defendant aged 36 (Highbury Case No. 262) charged whose most serious charge was Supplying Drugs (Class A – crack cocaine) illustrates the court's refusal to accept as a surety a person offering cash. This case was observed at the committal stage, the defendant having previously been granted bail on the following conditions: surety (£2000), reporting to police station daily, not to interfere with prosecution witness, not to go to the restaurant where the offence was alleged to have taken place, and residence. Although technically granted bail, the defendant had not been

released from custody for almost 2 months as the surety could not be raised. However, at the committal the defendant's mother-in-law was called by the defence to stand as surety, but was rejected as she had £2000 with her in cash. The stipendiary magistrate said that he was not prepared to accept cash but needed to see a bank or building society statement in relation to the sum required. The court ordered that the defendant should be retained in custody until such details were provided and the surety taken in the usual way, and the defendant was committed to Snaresbrook Crown Court.

The CPS representative gave his view as to why the court may sometimes require a higher figure for a surety than that 'offered' by the defence:

I think at the end of the day really you will find in most cases the figure for sureties is usually arrived at by defendants putting forward the amount that they think that their client is able to raise. Yes, the court does – depending on the seriousness of the offence – not necessarily go along with what the defence has suggested and sometimes goes for higher amounts. I think you will find that in those cases there is far greater risk of absconding, and the court usually requires – and perhaps the prosecution may suggest – that sort of figure sufficient to meet the prosecution's objection.

(Asian Assistant Branch Crown Prosecutor, Northern Inner London area)

The CPS representative went on to emphasise that the wider public interest must be taken into account in these cases:

With poorer defendants if the defence says, 'Look, my client has really got nobody who is able to provide a surety', unless he has a very very bad record of failing to attend, a court will not impose a high figure for a surety. However, a court may say, 'I hear what you are saying, but because of his previous record, this is the only way we can see that the fear that you will fail to attend can be met.' ... One has to consider the wider interests, it is not just the defendant's interest ... The public is there to be protected and clearly if there are concerns about this defendant, that he may fail to attend or whether he will commit further offences whilst on bail, one should not allow the defendant's personal circumstances to deflect you from considering the wider public interest.

(Asian Assistant Branch Crown Prosecutor, Northern Inner London area)

When it was put to him that black defendants often find themselves unable to meet the condition of surety, especially where the sum fixed was high, the magistrate was adamant that black defendants were *not* especially disadvantaged:

I don't agree that ethnic people have difficulties in raising sureties...You will find many British people here that haven't got anybody to support them financially, and I would suggest equally as many. We don't get very many sureties. I reckon probably to sit perhaps four weeks, and take one surety in four weeks, so it is not as if it is a very popular sort of thing.

(White Chairperson to the Lay Justices, Haringey)

Overall, the qualitative analysis was somewhat inconclusive in relation to the general proposition that bail conditions for black defendants are more severe than for white defendants. This was partly owing to the somewhat limited scope of data specifically on bail conditions. Furthermore, there was a conflict between the views of two main groups of informants on the question of bail conditions and 'race'.

Part Four

Explanations and Conclusions

Introduction

Part Four: 'Explanations and Conclusions' reconsiders the continuing disproportionate contact between black people and the criminal justice system and the unequal outcomes widely experienced by black suspects, defendants and victims.

Chapter 11 addresses the notion of 'ideological construction' and how this is closely linked to power relations in society. This chapter traces the development of 'race', racism and crime as ideological constructions and 'explains' why they need to be deconstructed in order to further an awareness and understanding of the position of black people in the criminal justice process. It seeks to demystify the over-representation of black people at various stages of the criminal justice systems and identifies the role of the media as a key player in perpetuating the extent of 'black criminality' by spreading disinformation on the nature and extent of so-called 'black crime'. It suggests that existing criminological theory does not go far enough to 'explain' such disproportionate contact and/or 'mystification' of 'black criminality'. The concept of 'virtual criminality' is developed with the aim of filling this gap.

The conclusion in Chapter 12 summarises and reassesses the main findings of this study and highlights key concerns about the policing of black people and discriminatory practices throughout the criminal justice process. It explains why discretion is identified as pivotal in the facilitation of unfavourable outcomes for black suspects and defendants at the bail/remand stage and at other stages of the criminal justice system. The impact of 'race' as a determining factor in police and court decision-making is reconsidered taking into account the influence of the ideological constructions 'race', racism and crime. Suggestions for further research on 'race' and criminal justice issues are also put forward.

Chapter 11

‘Race’ and ‘Crime’ as Ideological Constructions

The poor image which black people have of the courts leads to a sense that if one is black in court, one has to prove one's innocence rather than the court to prove one's guilt.

(The Society of Black Lawyers, as quoted in NACRO, 1991: 23)

*Telling lies to the young is wrong.
Proving to them that lies are true is wrong.
Telling them that God's in heaven
and that all's well with the world is wrong ...
Forgive no error you recognize,
it will repeat itself, increase,
and afterwards our pupils
will not forgive in us what we forgave.*

(Yevtushenko, 1962: 52)

Introduction

This chapter readdresses the ways in which criminological and sociological theory can be employed to shed light on the continuance of black people's disproportionate contact with the criminal justice system and over-representation in prison when these ‘facts’ seem stubbornly immune to empirical resolution. To do so it uses the notion of ‘ideological construction’ as a theoretical tool through which the concepts of ‘race’ and ‘crime’ can be deconstructed in order to reveal the significant absences and presences in their respective frames of reference.

Ideology concerns ideas encapsulating fundamental notions of a particular theoretical stance. Marxists have emphasised that:

The ideas of the ruling class are in every epoch the ruling ideas: *i.e.* the class, which is the ruling class, which is the ruling material force of society, is at the

same time its ruling intellectual force. The class which has the means of material production at its disposal, has control at the same time over the means of mental production, so that thereby, generally speaking, the ideas of those who lack the means of mental production are subject to it. The ruling ideas are nothing more than the ideal expression of the dominant material relationships ... which make the one class the ruling one, therefore the ideas of its dominance.

(Marx and Engels [1845–6], 1963: 39)

Leading proponents of critical criminology define ideology as ‘an inflection or misrepresentation of real relations’ which seeks to displace the reality of division, inequality and resistance (Hall *et al*, 1978: 322). Sumner defines it as ‘elements of consciousness generated within, and integral to social practice, reflecting the structure of such practice and the appearances of practical context’ (Sumner, 1979: 6). Similarly, ideology can be viewed as having ‘mirror-like’ qualities (Apter, 1964: 15). Essentially ideology is a sign of the times, or, as Sumner and Sandberg put it ‘a signpost to the character of the period’ (Sumner and Sandberg, 1990: 165).

Writing specifically on the question of racism, Yeboah argues that ‘*ideology* is a set of ideas, beliefs, images, impressions *etc.*, which explains, rationalises, legitimises, and/or justifies specific social practices’. Ideology is not static but may be modified according to changes in social practices, such that the introduction of new ideas in the former may similarly lead to changes in the latter (Yeboah, 1988: 47, 50).

Ideological construction is thus the means by which society attributes meaning and significance to various distorted images and socially constructed phenomena with the aim of dividing classes, and sections of classes, in order to justify social inequalities and to maintain structures of socio-economic and political dominance. Thus ideological constructions are essentially about power and maintaining power.

This chapter explores the centrality of the role of ‘race’, racism and ‘crime’, as ideological constructions in relation to the differential treatment of black people in the criminal justice process.

'Race' and 'Racism' as Ideological Constructions

'Race' and 'racism' are complex concepts. Whilst it has been observed that 'everyone "knows" what a "race" is, no one can quite define it' (Malik, 1996: 2). It has been argued that historically 'the shift from medieval premodernity to modernity' was in part marked by a shift 'from a religiously defined to a racially defined discourse of human identity and personhood'. The term 'race' has only been used from the sixteenth century although the concept of 'race' existed previously, but was only 'explicitly and consciously applied' from that time when 'racial characterization' also began to emerge in art, political, philosophical and economic debates (Goldberg, 1996: x, 24). The significance of 'race' has been specifically linked with the development of capitalism:

Capitalism destroyed the parochialism of feudal society, but it created divisions anew ... As social divisions persisted and acquired the status of permanence, so these differences presented themselves as if they were natural ... The tendency to view social differences as natural became rationalised through the discourse of race. The concept of race emerged, therefore, as a means of reconciling the conflict between the ideology of equality and the reality of the persistence of inequality.

(Malik, 1996: 6)

The emergence of the concept of 'race' as intrinsically linked with the development of capitalism is a theme reflected in critical criminology. For example, according to Gilroy, "'race" cannot be adequately understood if it is falsely divorced or abstracted from other social relations' (Gilroy, 1987a: 14). Furthermore, economic exigencies are pivotal in the scope and intensity of the evolution of 'race' as an ideological construction:

'Race' has to be socially and politically constructed and elaborate ideological work is done to secure and maintain the different forms of 'racialization' which have characterized capitalist development.

(Gilroy, 1987a: 38)

Thus the ideological construction of 'race' is a complex process drawing on diverse sources which essentially concerns the legitimization of racist practices for socio-economic purposes. The impact of 'race' as an ideological construction in terms of the personal as well as the political cannot be underestimated. As Yeboah aptly asserts 'for the black man (*sic*), to be defined inferior is to be treated inferior; and to be treated as inferior is to be rendered inferior' (Yeboah, 1988: 271). Hall *et al.* argue that 'race' performs a 'double function' as follows:

Race has become a crucial element in the given economic and social structures which each new generation of the working class encounters as an aspect of the 'given' material conditions of its life ... It is also the principal modality in which black members of that class 'live', experience, make sense of and thus *come to a consciousness* of their structured subordination.

(Hall *et al.*, 1978: 347)

It is acknowledged that 'race' is 'gendered' (see, for example, Sudbury, 1998: 105), but, regrettably, the full implications of this could not be addressed in this research (see Chapter 6). Young black people, and especially young black *males*, appear to be particularly vulnerable to internal as well as external ramifications of ideologically constructed notions of 'race'. Black youth, in particular, have borne the brunt of racial subjugation, to the extent that 'race':

structures, from the inside, the whole range of their social experience ... In their experience, English society is 'racist' – it *works through race*. They cannot avail themselves of the first-generation immigrants' principal source of optimism: that everything improves with time. In fact, things have palpably become much worse ... They are an excluded black group in a dominant white world.

(Hall *et al.*, 1978: 347, 345, 359)

According to Hall *et al.* the position of black youth can only be properly understood in terms of an age and generationally-determined class fraction within the history of post-

war immigration, and cannot be properly analysed 'outside the framework of racism' (Hall *et al.*, 1978: 389). For example, black youth in the early 1970s were elevated into the position of 'black mugger folk devils' for ideological purposes during a crisis of hegemony (see Chapters 1 and 4).

Keith takes the debate further by arguing that the concept of 'race' is not static since it 'assumes different meanings in different contexts', and that racial divisions are essentially 'ideological fictions' (Keith, 1993b: 238–39). According to Keith, the criminal justice system 'through racist constructions of criminality' constitutes a significant 'racialising institution' (Keith, 1993b: 239–40; see Chapters 1 and 4. Thus for Keith, 'race' is an important ideological construction which not only feeds public perceptions of racist stereotypes, but also legitimates and reinforces racially-biased criminal justice practices, especially 'repressive policing strategies' such as the targeting of black communities (Keith, 1993b: 242).

Concomitant with the development of 'race' was the development of *racism* which can be succinctly defined as:

a state of affairs that exists whereby a racial group which dominates society in socio-economic terms uses its position of power and privilege to systematically discriminate against other racial groups so as to render these groups in a position of political, social and economic disadvantage.

(Williams, unpublished, 1988: 22)

Given black people's lack of political power in western societies, essentially racism is 'a white problem in the sense that racism is a relationship of subjugation and whites are the subjugators' (Shaw *et al.*, 1987: vii). Racism serves to legitimise the continuing oppression of black and other minority ethnic groups. For example, Gordon has observed:

British racism, as the ideology of the superiority of white over black, justified centuries of physical conquest and subjugation of half the world's countries. It justified, too, the plunder, genocide and rape that accompanied it. But when the

sun set on the British empire, it did not set on racism. Rather, racism came home, to continue to serve as justification for exploitation.

(Gordon, 1983: 9)

British racism 'at home' can usefully be described as 'institutionalised' when it operates throughout the social institutions of society to the detriment of black and minority ethnic groups by decreasing their opportunities, positive outcomes and life chances. According to Pitts, 'institutionalised racism' is a product of imperialism:

It involves the imposition of unexamined, eurocentric evaluations of the proclivities and capacities of black people by relatively powerful white ones. Such evaluations have come ... to structure individual attitudes, social practices and social institutions. In consequence, black people are structurally disadvantaged in the competition for educational, vocational and material resources.

(Pitts, 1993: 104)

For Keith the police, local and central government, and the higher education system 'clearly display all the salient characteristics' of institutional racism as described in Dummett's book, *A Portrait of English Racism*:

A racist society has institutions which effectively maintain inequality between members of different groups, in such a way that the open expression of racist doctrine is unnecessary or, where it occurs superfluous. Racist institutions, even if operated partly by individuals who are not themselves racist in their beliefs, still have the effect of making and perpetuating inequalities.

(Dummett, 1973 as quoted in Keith, 1993b: 199)

However, Keith has asserted that the concept of institutional racism will remain limited unless the implications of 'the specific institutional context and practices which leads to racial subordination' are explored further (Keith, 1993b: 200).

An official attempt to address such issues emerged in the Macpherson Report on the Stephen Lawrence Inquiry (see Chapter 2) where 'institutional racism' was defined as:

the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.

(Home Office, 1999a: para 6.34)

Arguably, here 'institutional racism' can be criticised for being narrowly defined since it appears to focus on 'unwitting' instances of racial bias, thus focusing on 'unintentional' action or inaction and neglects deliberate or intentional aspects.

However, some groups welcomed the 'breadth' of this definition, and some, for example, the CRE, agreed that racism could be 'unwitting'. Others disapproved of this suggestion. (*The Guardian*, 25 February 1999). For example, according to a spokesperson for the Society of Black Lawyers and the Association of Black Probation Officers:

There is overwhelming evidence that there are many serving police officers up and down the country that deliberately and knowingly target and stereotype members of the African, Caribbean and Asian community. The MacPherson definition of institutional racism therefore falls short of the reality of the black community.

(*The Guardian*, 25 February 1999)

In McLaughlin and Murji's article 'After the Stephen Lawrence Report', the authors argue that the Macpherson report contained several 'flaws', one of the foremost being that 'the definition of "institutional racism" is one at the same time a damning indictment of the [police] force and also lets it off the hook' (McLaughlin and Murji, 1999: 374).

Notwithstanding definitional difficulties, it is clear that racism, institutionalised or otherwise, manifests itself in various forms. Moreover, as Gilroy has pointed out, racism is continually being reworked and reframed:

Racism is not a unitary event based on psychological aberration nor some ahistorical antipathy to blacks which is the cultural legacy of empire and which continues to saturate the consciousness of all white Britons regardless of age, gender, income or circumstances. It must be understood as a *process*. Bringing

blacks into history outside the categories of racism in opposition to the idea that it is an eternal or natural phenomenon, depends on a capacity to comprehend political, ideological and economic change.

(Gilroy, 1987a: 27; emphasis added)

Furthermore, 'discriminatory attitudes' of individuals do not amount to racism (Hall *et al.*, 1978: 389), rather it is a process inextricably linked to 'the context in which such individuals operate' (Gordon, 1983: 137) and to capitalist modes of production. For Hall *et al.*:

Racism ... is the specific mechanism which 'reproduces' the black labour force, from one generation to another, in places and positions which are race-specific. The outcome of this complex process is that blacks are ascribed to a position within the class relations of contemporary capitalism which is, at one and the same time, roughly coterminous with the position of the white working class (of which black labour is a fraction), and yet segmentally differentiated from it. In these terms, ethnic relations are continually overdetermined by class relations, but the two cannot be collapsed into a single structure. The position which results from this combination of race and class we have called a position of *secondariness*.

(Hall *et al.*, 1978: 389–90).

Therefore, racism can be best understood as a phenomenon intrinsically linked to and constructed through the development of capitalism. It operates on a personal as well as a political level such that it has become deeply entrenched in the very fabric of society as:

one of the most complex psycho-social by-products that economic man with his private enterprise has *manufactured* ... Racism is a matter of ingrained traditional attitudes conditioned through institutions. For some, it is as natural as breathing.

(Jackson, 1975: 103–4; emphasis added)

Some writers have preferred the notion of 'racisms in the plural' rather than 'racism in the singular' (Gilroy, 1987a: 38; Hall, 1980; Jefferson, 1991; Keith, 1993: 250). According to Solomos and Back there is a need to develop the conceptualization of racism

which takes into account 'the existence of complex multifarious *racisms* in specific historical contexts' (Solomos and Back, 1996: xvii). In addition to discrimination based on 'colour-racism' that is dependent on skin colour, it has also been argued that there is an extra dimension of 'cultural-racism' which is 'racism which uses cultural difference to vilify or marginalise or demand cultural assimilation from groups who also suffer colour-racism', for example, as suffered by Asians and Arabs (Modood, 1992: 7). Whilst the notion of 'racisms' rather than 'racism' is useful in helping to understand the complexity, diversity, and adaptability of racist policies and practices, arguably the essence of racism for black people remains the same:

Racism is like a Cadillac. The 1960 Cadillac doesn't look like the 1921 Cadillac, but it is still a Cadillac; it has simply changed form.

(Malcolm X, as quoted in Otis, 1993: 151)

Whether racism is conceptualized as evolving into different forms or as manifesting itself differently according to the particular context, its ability to mutate according to specific circumstances needs to be recognised (see Introduction). Therefore, racism must be contextualized historically, socio-economically, *and* ideologically. It played a vital role in colonial exploitation and imperialism, and played and continues to play such a role in securing Britain's economic position. For example, it has been argued that the doctrine of racial supremacy during imperialism was a crucial 'ideological weapon' enabling the dominant classes to exacerbate class division and class conflict in the colonial work force in addition to the indigenous working class (Hall *et al.*, 1978: 345). Furthermore, the origin of 'race' as an ideological construction stemmed from the need to justify black slavery, racism being essentially a 'weapon of exploitation' (Davidson, 1984: 143). The doctrine of white supremacy underpinned the 'justification' of slavery of Africans by

Europeans (see Yeboah, 1988: 54–59; Fitzpatrick, 1987) and British Imperialism, aided by the emergence of eugenics (Graham and Clark, 1996: 148; see also Chapter 4).

The approach to writings on ‘race’ and racism has often incorporated an ideological dimension. In contrast to this writings on *race relations* rarely touch upon the ideological implications of ‘race’, and neglect to consider how racism bolsters up capitalist society. While they may acknowledge the importance of striving for justice in the criminal justice system in the pursuit of racial equality (see, for example, Shaw *et al*, 1987: viii), for instance, in suggesting strategies such as monitoring *etc* in order help counter some discriminatory practices, this approach fails to explain the crucial *structural* position of ‘race’ under capitalism. It can also be argued that race relations legislation, which race relations organisations strive to enforce, is largely ineffective and has the ideological effect of proffering the appearance of official moves towards racial equality.

Thus the extension of the *Race Relations Act* 1976 to policing in the Macpherson Report (Recommendation 11) (Home Office 1999a) and subsequent acceptance in the *Home Secretary’s Action Plan* with the promise that ‘all public services are to be brought within the scope of race discrimination legislation’ (Home Office, 1999b: 11) may only touch the tip of the iceberg of racism. It is possible that the nature of racism is so elusive, as the arguments in Lustgarten (1986) underline, that *countering it does not easily fall within the ambit of the law*:

an approach to discrimination that relies upon the use of negative legal sanctions for violation of rights created by statute can at best have modest impact upon the eradication of discrimination, and virtually none upon the more pervasive and subtle manifestations of racial disadvantage.

(Lustgarten, 1986: 78)

Lustgarten asserts that ‘racial disadvantage’, that is ‘psychological or social inequalities’ disproportionately experienced by racial minorities, is ‘outside the law’ (Lustgarten, 1986:

72). However, Modood has argued that racial discrimination is not necessarily related to racial disadvantage since some Asian groups do suffer racial discrimination in education and employment selection processes, nevertheless, these groups are over-represented in admissions to higher education facilities and to the professions (Modood, 1992: 8).

With the notable exception of some miscarriage of justice cases and successful civil actions involving black defendants, manifestations of racism in the criminal justice system have proved very difficult to expose. Specifically made the subject of recommendations for change in the Macpherson Report (Recommendations 10, 58), Police Disciplinary and Complaints procedures have been subject to much criticism (see IRR, 1987: 83-7), mainly, as Doreen Lawrence points out, because of the issue of the 'police policing themselves' (*The Guardian*, 25 February 1999). Even where complaints against police *are* successful, similar to successful court actions by black defendants, arguably a certain number of highly-publicised successful cases – perhaps representing only the tip of the iceberg of the problem of racism in the criminal justice system – again has the ideological effect of allowing a limited amount of justice *to be seen to be done*, whereas the enormity of the problem remains masked.

‘Crime’ as an Ideological Construction

Notwithstanding definitional problems concerning what constitutes ‘crime’, it has been convincingly argued that ‘crime’ is an historically and culturally specific phenomenon created through law to support dominant ideological interests. Citing several researchers such as Chambliss (1964), Duster (1970), Hay (1975), and Thompson (1975), who view criminal law categories as ‘ideological reflections of the interests of particular powerful groups’, and Sumner (1976), who concludes that ‘*criminal law categories are ideological constructs*’, Box argues that as such they amount to one means by which social control is exercised by the powerful over the powerless. Once behaviour more usually

carried out by 'subordinate populations' comes within the ambit of the criminal law, legal punishments can be justified, and such populations can be criminalized; although he stresses that it is simplistic to assert that *all* criminal laws solely benefit the dominant class (Box, 1983: 7–8). However, Box is adamant that *serious* offences are constructed in such a way that behaviour more usually carried out by the powerful are less likely to be categorised as criminal, for example, employers' failure to maintain safe conditions for their workers so that deaths arising from such a failure do not constitute murder or manslaughter (Box, 1983: 8–9). Thus crime and criminalization amount to '*social control strategies*' (Box, 1983:13).

Hall *et al.* (1978: 50) persuasively argue that 'crime' not only concerns the physical circumstances of life but also represents a fundamental aspect of the ideological dimension of 'Englishness'. Thus 'crime' is essentially 'evil' and alien – the reverse of the 'normality' of 'Englishness':

Crime allows all 'good men and true' to stand up and be counted – at least metaphorically – in defence of normality, stability and 'our way of life'. It allows the construction of a false unity out of the very different social conditions under which this 'way of life' is lived, and under which crime is experienced.

(Hall *et al.*, 1978: 150)

When white collar and corporate crime *is* exposed – although most remains 'hidden' – their cost far outweighs the cost of offences usually viewed as constituting 'the crime problem' (see, for example, Sutherland, 1949; Box, 1983) which is perennially constructed as a working-class phenomenon. When the enormity of such 'hidden' crime is revealed, the false representation of English law-abidingness highlighted in the above quote becomes glaringly apparent since much English enterprise, both at home and abroad and in the past as well as in contemporary times, has relied heavily on criminal activity by 'respectable' upper/middle-class businessmen. Box convincingly argues that the focus on crime by

lower-class and often ethnically-oppressed young males creates an ideological illusion, so that attention is diverted away from large-scale crime perpetrated by upper/middle-class and middle-age white males. This results in the ideological construction of lower-class crime as *the* crime problem, whereas it is only *a* crime problem (Box: 1983: 3). Furthermore, Cohen has identified the significance of the role of ideology in 'official state discourse' surrounding 'the culture of denial' in relation to crimes of the state (Cohen, 1993).

Sumner has emphasised the political nature of the law, describing it as a 'politico-ideological' phenomenon (Sumner, 1979: 268), and for Sumner and Sandberg 'crime' is a vital 'ideological resource' inextricably linked to ruling class political domination:

deviance, criminality and policing, in the times and societies we know, have never escaped their basic ideological role in the everyday, practical politics of domination by one class, gender and race over others.

(Sumner and Sandberg, 1990: 190)

Sumner and Sandberg (1990), and Sumner (1990) take the view that the term 'social censure', rather than the strict Marxist instrumentalist theory of the criminal law and associated developments, more aptly describes the socio-political implications of crime and deviance:

as negative ideological categories with specific, historical applications. These negative categories of moral ideology are social censures ... Nuts, sluts, perverts, prostitutes, slags, murderers, psychopaths, villains, freaks, wreckers, troublemakers, militants, muggers, rioters, squatters and scroungers are all social censures with the potential to mobilize the forces of law, order and moral purity against targeted sections of the population.

(Sumner, 1990: 26–7)

De Haan places these arguments in an even wider perspective when he asserts that 'crime' is an ideological construction which maintains 'political power relations; justifies

inequality and serves to distract public attention away from more serious problems and injustices' (De Haan, 1991: 207).

When 'crime' is linked to 'race', such ideological constructions facilitate the negative portrayal of black criminality and unequal treatment in the criminal justice process.

The Fusion of 'Race' and 'Crime' as Ideological Constructions

The exploration of the possibility of being able to establish or refute the existence/extent of racist policy and/or practice in the criminal justice system is complex. Similarly, the notion of criminality generally is complicated, and the concept of *black* criminality involves additional structural and other considerations including intricate analysis of racial imagery and their connotations (see also Chapters 1, 4, and 9). The fusion of 'race' and 'crime' as ideological constructions is exemplified by the phrase 'black crime' – there being no parallel meaning attached to 'white crime'. Gordon has argued that:

A sort of widely understood code makes it clear just what is meant when people talk of 'inner cities', 'mugging', 'street crime', Brixton, Lambeth, Toxteth, Moss Side. All have become synonymous with and symbols for 'black crime'.

(Gordon, 1983: 141)

The manipulation of official statistics and their misrepresentation in the media has been a crucial factor in the distribution of disinformation on purported spiraling levels of so-called 'black crime', and in the projection of negative images of black criminality into popular consciousness. For Gilroy, this results in:

The idea that blacks are a high crime group and the related notion that their criminality is an expression of their distinctive culture have become integral to British racism.

(Gilroy, 1987a: 109)

Criminological research on black people and crime is further complicated because 'black' and 'criminality' are such emotive terms. For example, according to Keith:

"Race" is constructed as a facet of criminality through the institutionally racist channels of White society ... it is impossible to conceive of an objective empirical reality of "Black crime" which can be investigated by social research. This is because criminality, a chameleon concept defined by the histories of legal whim and political fashion, is at once both social reality and emotive myth.

(Keith, 1993b: 246, 247–8).

In spite of the 'chameleon' quality of historically and culturally-specific notions of criminality and the difficulties of empirical research in pinpointing the nature and extent of black criminality, critical criminologists have argued that purported increases in 'black crime' have perennially been used to justify increases in police power/resources and law and order strategies. Hall *et al.* asserted that in the 1970s 'mugging' and 'black crime' became 'virtually synonymous', and 'indissolubly linked'. Moreover, 'each term references the other in both the official and public consciousness' and are especially associated with areas with a large black population (Hall *et al.*, 1978: 327). Solomos also argues that the motive behind the black youth/mugging connection was to legitimise further police control methods, and, similar to Hall *et al.* (1978) and Keith (1993b), believes that these were mainly directed at areas with a sizeable proportion of black people:

The ideological construction of the involvement of young blacks in mugging and other forms of street crime provided the basis for the development of strategies of control aimed at keeping young blacks off the streets and keeping police in control of particular areas which had become identified both in popular and official discourses as 'crime-prone' or potential 'trouble spots'.

(Solomos, 1993: 134–5)

Media representation of dubious statistics on 'black crime' and sensationalised news reports accompanying the 'mugging' panic, as described by Hall *et al.* (1978; see Chapters 1 and 4), is an example of the official 'need' for high crime rates in order to legitimise increased methods of crime control. Similarly, purported high 'black crime' rates and the notion of black people's disproportionate involvement in criminal activities can be conveniently used as a justification for black people's over-representation among convicted prisoners, and unconvicted prisoners on remand in custody. Therefore, the way in which false ideas on differential crime patterns and black criminality can be used to legitimise excessively harsh treatment of black people by the criminal justice system indicates the necessity of maintaining the link between 'race' and 'crime' as ideological constructions, similar to the former need to maintain 'race' as an ideological construction during slavery. It can be argued that the ideological construction of racism has reflected a shift from the need to justify the notion of *enslave and control* in relation to black people, to the notion of *contain and control* (see also Chapter 9).

For radical criminologists containing black people is a means of 'controlling surplus labour' (see Hudson, 1993a: 16), whereas during slavery enslaving black people was a means of securing needed free labour. Gilroy argues that the negative imagery surrounding black youth and 'mugging' in the 1970s confirmed and consolidated dominant perceptions of a strong association between 'undesired immigrants' and an inherent predilection for criminal behaviour (Gilroy, 1987b: 108).

The fusion of 'race' and 'crime' as ideological constructions is also significant in relation to the question of public order. Keith argues that 'in the 1980s the variables of race, crime and public order did not just interact, they came in part to define each other' amidst increasing black criminalization and racialization of British society. The shift towards more authoritarian forms of policing wherein 'the experiences of British Black communities provided the ideal testing ground on which such changes were to be justified'

were facilitated by the 'ideological project' in relation to changes in the post-war era in addition to the 'almost fortuitous incidence of civil disorder', that is the riots in predominantly black areas (Keith, 1993b: 232, 235–6). Here the role of 'race' and 'crime' as ideological constructions was pivotal since increases in police powers and resources were legitimised owing to black protest about long-standing grievances over police/black relations being seen only in terms of criminal behaviour/public disorder:

the 'mystification' of the relationship between race and crime rendered possible the transformation of civil disorder into a *natural* social problem, demanding solutions couched in the vocabulary of social control. This process of *naturalization* (turning history into nature) suggested that if scenes of violent unrest were a necessary characteristic of contemporary society it was, after all, only natural that preventative measures should be taken.

(Keith, 1993b: 236–7)

Scraton and Chadwick agree that popular support is likely to be more forthcoming for official intervention against 'criminal' acts rather than for 'political' causes. Furthermore, even where no particular political motive exists, the criminalization process can successfully detract from 'the social or political dynamics of a movement' and instead emphasise its "'criminal" potential'. They argue that criminalization operates in conjunction with marginalization as a result of the targeting of certain groups (Scraton and Chadwick, 1991: 173), but that the consequences for black people in this process seem excessively severe:

Even if identifiable groups have a greater propensity to commit crimes than other comparable groups, and there is no evidence to suggest that 'black crime' is any more prevalent than 'crime' in other communities, that does not explain the ferocity with which the criminal justice process has reacted to the black people with which it deals.

(Scraton and Chadwick, 1991: 176)

The powerful influence of the ideological construction of 'race' together with 'crime' can help to explain why black people in particular are the object of such harsh treatment and why the fillip of racism propels black people beyond the ordinary boundaries of oppression of other marginalised groups. Keith argues that 'blackness' is 'one racist construction' of the criminal justice system which powerfully 'connotes an imagery of "Black criminality"' which is realised at specific times and places. Strong racist imagery is a prerequisite for black criminalization since 'constructions of criminality are linked to racially circumscribed processes of criminalization' (Keith, 1993b: 245, 243). The function of criminal justice in this process does not remain static and must be analysed within the context of contemporary socio-economic developments:

the role of the criminal justice system in the reproduction of a racialized society has changed. Where once the criminal justice system was an arena in which migrant minorities came face to face with the racist injustices of White society, the system itself has now assumed a determining role in constructing particular racial groups. These processes must also be set against the dramatic material and social restructuring of British cities that has accompanied the Thatcher years.

(Keith, 1993b: 248)

Thus the fusion of 'race' and 'crime' as ideological constructions combine to fuel the engine of racism which helps to drive capitalism – a well-oiled and racially-oppressive machine – within which *racism in the criminal justice process* is a key lubricant.

Virtual Criminality

Criminological research on discriminatory practices on racial grounds which takes into account notions about the fusion of 'race' and 'crime' as ideological constructions can usefully further the investigation of the intricacies of apparent racial subjugation of black people in which the criminal justice system plays a key role. However, while such theory has been influential in revealing 'race' and 'crime' as ideological constructs, and has come to reflect

a more complex position which is alive to 'the cumulative and interactive effects of disadvantage' (Gelsthorpe, 1996: 130), there remains a need to develop new conceptual tools in which the apparent contradictions of existing theoretical perspectives and empirical vagary can be adequately explored. The development of the concept of 'virtual criminality' aims to fill this gap in contemporary criminological theory.

Virtual criminality: definition and theoretical standpoint

Virtual criminality can be defined as a state of affairs whereby a person or group of persons is perceived by a wide section of society as having a high propensity towards criminality and as being highly likely to be involved in criminal activity or a threat to public order. Virtual criminality arises as the result of the appearance or perception of reality and is facilitated by the ideological construction and media misrepresentation of the criminality of marginalised groups over and above the extent of their true involvement in criminal acts. This is promulgated by and serves the interests of powerful groups in society because it helps to justify increases in control and deflect attention away from their own criminality.

Black people in particular are propelled into a state of virtual criminality because of the impact of 'race' and 'crime' as ideological constructions and the racist orientation of the criminalization process which perennially focuses on black people as highly visible and vulnerable targets. Thus the ideological construction of black people as 'virtual criminals' means that a wide section of society assumes high levels of black criminality to be *persistent* and *extensive*. The instigation and pursuit of criminal proceedings against black people – arguably at intense and disproportionate levels – play a key role in establishing this. For example, as the Institute of Race Relations has pointed out:

Criminal procedure is being used not to establish guilt or innocence but to cast blacks as criminals in a self-justifying, perpetuating cycle.

(IRR, 1979: 60)

Unlike the upper classes, large sections of the lower classes and various marginalised groups - particularly the unemployed and the 'unemployable' – may be rendered in a state of 'virtual criminality', however, black people are most likely to be perceived as 'virtual criminals' because of the sheer intensity and endurance of racial stereotyping and the influence of the fusion of 'race' and 'crime' as ideological constructions. While virtual criminality is likely to impact more directly on *all* people at the lower end of the socio-economic scale, it is also likely to extend to *black* people irrespective of class or educational and/or employment status.

For example, as Hudson has pointed out

All black people are harassed at ports and airports under suspicion of illegal entry; black communities are seen as 'no-go' areas where *all* residents are expected to be hostile to police.

(Hudson, 1993a: 21 emphasis added)

Undoubtedly criminal behaviour and hostility to law enforcement agencies does exist among black people, but as Feagin has emphasised:

It is too easy to move from characteristics of a minority of Black residents of a given urban community, however unconventional or criminal, to ungrounded generalizations about Black areas overall.

(Feagin, 1974 as cited in Inniss and Feagin, 1996: 351)

The widespread assumption that *persistent* and *extensive* criminality exists among black people to a high degree is a consequence of the strong association between 'blackness', crime and disorder evolving from the socio-economic and psychological effects of racism as a result of capitalist power relations. This perennially renders the perception of black people in negative terms, for example, as 'suspicious', 'crime-prone' and 'anti-authority'.

It can be argued that this may be partly explained by a sort of 'transference' of aggression, criminality and guilt from the powerful onto the powerless. This can be likened to a similar process involved in the projection of colonial administrators' own feelings of inadequacy and negativity onto various indigenous peoples in the nineteenth century (see Hall, 1989,1991; Pajaczkowska and Young, 1992). The particular form of oppression under slavery and colonialism against Africans and their descendants, their visibility as a presence within Britain, and the concomitant ideological constructions of 'race', 'racism' and 'crime' has enabled black people to easily be identified and characterised as 'aggressive', 'criminal' and 'guilty' (until proven innocent?) in contemporary society.

Virtual criminality is developed from a critical criminology standpoint drawing on themes related to the impact of socially-constructed dominant perceptions of criminality, criminalization, selective law enforcement, racial stereotyping, racially-constructed 'criminal others' and theories involving the ideological construction of 'race' and 'crime' (see Chapters 1 and 4). Central to the debate involving such concepts remains the question as to whether the over-representation of black people in prison simply reflects higher rates of crime among black people than white people or whether it reflects higher rates of black people caught and processed by the criminal justice system? (see Introduction). Moreover, issues relating to the possibility of an association between 'ethnicity, black culture and crime', as Gilroy has pointed out, remains under-theorised (Gilroy, 1987b: 118; see also 1987a: 109-10). Arguably questions need to be raised as to whether existing critical criminological theory goes far enough in 'explaining' the implications of 'black criminality', and whether its methods and research interests need to be expanded in order to try to do so (see Chapter 4).

Virtual criminality draws on critical criminology's stress on the importance of the influence of intense negative stereotyping of *young black people*: firstly, for example, as encapsulated by Hall *et al.* when they pointed out that black youth are stereotyped as:

'naturally' prone to criminal activity, rude, aggressive, violent, anti-police in their attitudes, untrustworthy, over-emotional, over-demonstrative, lacking rational self-control, basically lawless and disorderly.

(Hall *et al.*, 1998: 23)

Secondly, as Shallice and Gordon have pointed out, in essence black youth are widely characterised as crime-prone to the extent that:

their very presence is considered to be suggestive of impending criminality.

(Shallice and Gordon, 1990: 31; see headnote Chapter 10)

Thirdly, that black youth are widely perceived as a notable threat to the social order (see Cashmore and McLaughlin, 1991). This was also reflected in the poignant writings about young black males by the black author, Richard Wright, in *Native Son*:

Excluded from, and assimilated in our society yet longing to gratify impulses akin to our own, but denied the objects and channels evolved through long centuries for their socialised expression, every sunrise and sunset make him guilty of subversive actions. Every movement of his body is an unconscious protest. Every desire, every dream, no matter how intimate or personal, is a plot or a conspiracy. Every hope is a plan for insurrection. Every glance of the eye is a threat. His very existence is a crime against the state.

(Wright, 1940 as quoted in Howard League, 1989: 14-15)

Fourthly, that crime control and perceptions of 'danger' are intrinsically linked to the criminalization of particular groups in society, especially the young. As Graham and Clarke have stressed, young people, especially young black people, are targeted as 'suspicious persons', and are faced with 'the presumption that they are "suspect", with all

the resulting surveillance, intrusion and harassment that this entails' (Graham and Clarke, 1996: 171).

However, notwithstanding critical criminologists' apt highlighting of the significance of issues related to 'street crime', racial stereotyping and criminalization of 'black youth' (see also Chapters 1 and 4), the impact of these phenomena on third generation young black people, and for black people *as a whole* need to be explored further. Socio-economic, political and ideological developments, as well as criminal justice and relevant technological advancements at the end of the 1990s and in the new millennium all need to be taken account in any such analyses.

The concept of virtual criminality recognises the central role that perceptions of lower-class criminality in general, and black criminality in particular, play in contemporary constructions of 'the crime problem'. It incorporates the stance of writers such as Box who has convincingly argued that crimes of violence such as robbery and assault which are 'focused on by state officials, politicians, the media, and the criminal justice system' may only constitute '*a* crime problem and not *the* crime problem'. Such a forceful focus on lower-class perpetrators of such crimes serves to divert attention away from crimes of the powerful which in economic and victimization terms are often far more injurious than the crimes of the former (Box, 1983: 3; see also above). This is the outcome of the exercise of 'too much discretion' by criminal justice officials which enables the powerful to secure the benefit of more favourable decisions in the criminal justice process (Box, 1981).

Previous empirical research on black people and the criminal justice process has highlighted the key importance of the role of discretion in criminal justice decision-making. Some studies have suggested that the less favourable exercise of discretion in the case of black suspects and defendants leads to their being more likely to receive harsher treatment than their white counterparts (see Chapters 2–3). This proposition concurs with findings in this research on bail both from the quantitative analysis on court bail (see

Chapters 8 and 10), and from the qualitative analysis on police bail and court bail where the question of the impact of ideological considerations and social control strategies was also raised (see Chapters 9–10). Overall, the qualitative analysis in this research concurs to some extent with Box's (1981) conclusion that the scope for discretion in court decision-making is too wide. Given this, it remains highly amenable to discriminatory practices on the grounds of 'race'.

The concept of virtual criminality endorses the view that law enforcement is partial and selective and is particularly marked in relation to black people. Dominant portrayals of excessively high levels of 'black crime' legitimises the implementation of increasingly severe methods of state control. As may be expected (see Chapter 2), the police are at the forefront of such measures of control the effect of which are physical as well as psychological for black people within the black community (see Malcolm X, 1965 below) and elsewhere. For example, as the Institute of Race Relations has pointed out:

arrest and police powers are now being used to keep the black community in its place: physically, by penalizing blacks found out of their 'ghettoes', and psychologically, by penalizing those who attempt to demand their rights or protect another's.

(IRR, 1979: 44)

The concept of virtual criminality also draws on critical criminology's notion of the 'mythological' nature of black criminality (for example, Gilroy, 1987b; see Chapter 4) which identifies the importance of the way in which it is represented. Black people are most likely to be rendered 'virtual criminals' owing to *over-criminalization* and *stereotyping effects*. It can be argued that dominant perceptions of the existence of disproportionate levels of black criminality as compared to white criminality is 'virtual'. A substantial proportion of unreal and negative images of the nature and extent of black criminality is projected into popular consciousness following disinformation disseminated

by official sources such as the police, the courts and the Home Office, which is then represented and distorted through media news values.

This concept can be likened to contemporary developments in virtual reality ('an image or environment generated by computer software with which a user can interact realistically using a helmet with a screen inside, gloves fitted with sensors, etc') in computing where 'virtual' in that context is defined as 'not physically existing as such but made by software to appear to do so' (Thompson, 1995: 1565). However, without exploring the underlying arguments involved, it is interesting to note that the obscure question of 'reality' was highlighted in a recent controversial film:

What is real? How do you define real?

(Wachowski Bros., 'The Matrix', 1999)

In 'virtual reality' software can assist, train or simply entertain the user. In 'virtual criminality' those seeking to maintain control are assisted by the persistent and persuasive portrayal of black people as criminal. This helps to 'train' many people to perceive black criminality as an acute and widespread phenomenon.

The fusion of 'race' and 'crime' as ideological constructions is pivotal in this process where the media plays a crucial role in the promotion of notions of excessive black criminality and in inducing the fear of 'black crime', thereby legitimating high levels of police monitoring of black communities and individuals. This tendency, identified by critical criminologists as a key factor leading to the disproportionate criminalization of black people, was also highlighted by proponents of Black power:

They take the statistics, and through the press, they feed them to the public. They make it appear that the role of crime in the Black community is higher than it is anywhere else ... This keeps the Black community in the image of a criminal. It makes it appear that anyone in the Black community is a criminal. And as soon as this impression is given, then it makes it possible, or paves the way to set up a police-type state in the Black community ... It's a science that

they use, very skillfully, *to make the criminal look like the victim, and to make the victim look like the criminal.*

(Malcolm X, 1965, quoted in Perry, 1989:160 emphasis added).

Recognition of the impact of the type of disinformation intimated in the above quote is taken into account in the notion of ‘virtual criminality’ and ‘reality twists’ as described in the sub-section below.

Thus the concept of virtual criminality also draws on critical criminology’s theorising on the social construction of crime waves and ‘moral panics’ (see Chapters 1 and 4) and on the effect of the manipulation of official statistics on ‘control waves’ (Sharpe, 1996: 118). It recognizes the ways in which a more interventionist stance towards black people (compared to other racial groups) is ‘legitimised’, and why such a high degree of scrutiny, surveillance, containment and control of black people – resulting in over-policing and over-representation in prison – is ‘justified’. The promulgation of a racialised ‘virtual criminality’ leads to the intensification of black people’s ‘controlled reality’. The end result is racial subjugation in which the criminal justice system plays a key role. As Keith has pointed out:

through the combined influences of all the institutions of the penal system, not just the police, an abstract criminalized subject position of “Blackness” has been constructed which in its specific realizations can systematically blight the life-chances of whole communities.

(Keith, 1993b: 7)

Virtual criminality, virtual justice and ‘reality twists’

The concept of virtual criminality extends critical criminological theory and notions of ‘race’ and ‘crime’ as ideological constructions, since it not only recognises the ‘mythological’ dimension of black criminality, but also stresses that the dominant perceptions and projections of black criminality amount to a ‘reality twist’ (cf. the name of a Wizards of the Coast ‘Ice Age’ Magic card) whereby dominant portrayals of ‘visible’

crimes of the powerless, and especially 'black crime', is widely perceived as the real source of the 'crime problem'. Notwithstanding the consequences in terms of increases in 'the fear of crime' and increases in state control problems, reality is, therefore, *twisted* because such portrayals are largely based on 'virtual' imagery of lower-class criminality, and especially black people's ostensible predilection and propensity for crime.

Thus virtual criminality is intrinsically linked to the mutation of perceptions of crime where, like in the virtual world experienced by virtual reality users, 'virtual' images can *appear* real for the users as well as observers, makes a type of distorted reality *appear* as real for observers as for participants. The importance of such 'reality twists' also opens up broader questions about the nature of reality experienced by the different participants in the criminal justice process, about who has the power to create virtual criminality images, and about the nature of the social order. In order to explore the way in which black people are especially effected by virtual criminality, it is necessary to examine how black people have been consistently identified by a racist British culture as having criminogenic tendencies to a greater extent than white counterparts, and the underlying motives why such a negative portrayal of black criminality has served the interests of dominant groups.

The concept of black people as 'virtual criminals' moves beyond the realms of marginalization and myths in contemporary society, and is not confined to historically-specific racially-constructed 'criminal others', black stereotypes, scapegoats, or folk devils (see Chapter 1). Essentially virtual criminality incorporates all these phenomena in an all-pervading ideological construction of 'race' and 'crime' which is not 'summoned' in times of crisis like the folk devil, nor restricted to the ambit of any specific racially-constructed 'criminal other'. The high profile portrayal of 'black crime' has made black people particularly vulnerable to being primary targets of criminalization, and to being more easily and more extensively criminalised than their white counterparts. Arguably, black people are more easily criminalised in real terms, because they are more easily pre-disposed to

being *virtually criminalised* at the outset of as well as throughout the criminalization process.

Although virtual criminality adopts a structural stance in trying to explain black people's disproportionate rate of adverse contacts with the criminal justice system, it moves beyond orthodox materialist and structuralist approaches which neglect the specific impact of racism. Virtual criminality suggests that racism, in spite of its elusive tendencies, 'naturalises' the specific subjugation of black people by the criminal justice system to the extent that *all* black people become 'virtual criminals' requiring stringent methods of social control. Furthermore, this has a knock-on effect on the legitimisation of increasingly severe state control methods generally. For example, Keith has aptly highlighted the significance of the policing of black people in these developments:

policies of social control in British cities have stemmed from the naturalization of police Black confrontation and extending this to an almost universal status. In this sense the processes of racialization have extended beyond racialization alone.

(Keith, 1993b: 252–3)

Hall *et al.* touched upon one of the underlying causes of virtual criminality for black people when the *permanent* nature of criminalization of the latter was highlighted:

the 'so-called rising black crime rate', which represents a problem of containment and control for the system, presents a problem for black people too. It is the problem of how to prevent a sizable section of the class from being more or less permanently *criminalised*.

(Hall et al, 1978: 390)

Thus the concept of virtual criminality recognises the particular problems caused for black people because black criminality is widely assumed to be *persistent* and *extensive* as a result of black people being *over-criminalised* and subjected to the effects of extreme negative stereotyping. Black people have *all* been successfully criminalised to a greater or

lesser extent both literally and metaphorically. Black presence suggests the threat of crime. Black existence equals criminal existence.

Jefferson (1992) also touched on the notion of the permanency of criminalization for those socially-constructed as a 'criminal other' in the late nineteenth century. However, unlike virtual criminality which stresses that this notion is applicable to *all* black people, Jefferson (1992: 29) pinpoints the 'criminal other' as the 'rough working class, adolescent male'; furthermore:

Sooner or later, his latent criminality, or that of his brother, or his friend, or his brother's friend (it makes little difference since they are all similarly afflicted) will manifest itself, thus offering retrospective justification for any earlier interventions ... For black, male *adolescents* that means entering the already existing circle of mutual suspicion, alienation and amplification: to be already suspect, already (latently) guilty, a darker version of the criminal Other.

(Jefferson, 1992: 30; emphasis added)

Virtual criminality also encompasses arguments put forward by Keith (1993b) who asserts that perceptions of 'race', 'crime' and 'public order' not only interacted, but also in part defined each other in the 1980s. Although Keith acknowledges the centrality of black youth, for example, where he argues that at times 'the couplet *Black youth* can be employed in racist discourse to signify *criminality*', unlike Jefferson (1992), Keith also stresses the wider implications for black people *as a whole* by arguing that criminalization results from a 'position which flexibly defined "Blackness" as constitutively criminal' (Keith, 1993b: 234). The significance of Keith's (1993b) view for the concept of virtual criminality, is that not only does it highlight the antagonism against certain black people because of a perceived propensity for public disorder, but it also highlights the impact of notions of heightened criminality in the case of black people in general.

Malcolm X's observation that media disinformation making 'the criminal look like the victim' and 'the victim look like the criminal' (Malcolm X, 1965, quoted in Perry, 1989:160 above) also reflects the notion of a 'reality twist' in how perceptions of members of the black community as criminal *and* as victims can become severely distorted or even

inverted. As Hudson has pointed out, it can detract from 'taking seriously' the question of black people as victims of crime:

the criminalization of black people is so entrenched that there is considerable resistance to seeing them as victims ... There has been no moral panic about racial assaults and abuse.

(Hudson, 1993a: 25)

Thus 'virtual criminality' can also help to account for differential treatment of black people as *victims*: the perennial portrayal of black people as criminal can hinder the way they are treated as victims of crime. This was exemplified in the Stephen Lawrence case in relation to the police treatment of Duwayne Brooks (who was with Stephen Lawrence when he was killed) who has stated:

Racism killed my friend Stephen. It also stopped officers administering first aid while he was lying on the pavement. It also allowed the officers investigating the case to treat me like a suspect, not a victim. It also rubbished our chances of convicting those killers of the murder of Stephen Lawrence.

(*The Guardian*, 25 February, 1997)

Hall *et al.* concluded that the weight of the evidence in the case of Duwayne Brooks confirmed their arguments that racial stereotyping operates 'as a process' (Hall *et al.*, 1998: 4; see also Chapter 1) which had a number of implications in relation to his treatment by the police (see Hall *et al.*, 1998: 3–4). They also aptly conclude, 'racial attitudes and stereotypes are persistent and pervasive in contemporary British society' (Hall *et al.*, 1998: 25). This helps to create fertile ground for black people to continue to flourish in 'virtual criminality'.

Therefore, the concept of virtual criminality challenges any claims to the possibility of equality under the law for marginalised groups, and especially for black people who can be said to only experience what amounts to 'virtual equality' since it is well established that disproportionate black criminalization results in detrimental tangible outcomes in real terms. This state of affairs increases the likelihood of black people slipping through – or being pushed through – the safety net of justice. The notion of virtual criminality considerably helps to explain why the level of scapegoating to which black communities

are subjected in contemporary Britain is 'without precedent' (Keith, 1993: 239), and why the criminal justice process has reacted with such 'ferocity' towards black people (see Scraton and Chadwick, 1991: 176 above) *over and above* other marginalised groups.

Because black people are so often perceived as 'virtual criminals' *at the outset of as well as throughout* the criminal justice process then a higher degree of state control and containment continues to be operated and legitimised for black people. The disproportionate involvement of black people in the criminal justice process and over-representation in prison is real, but it is not all of the reality. The notion of virtual criminality helps to explain why reality is *twisted* so that these unjust outcomes *appear* justified and why they are so difficult to 'prove' empirically.

In this sense the concept of virtual criminality may have wider application in alerting us not only to the 'imagined' nature of the 'crime problem', but also to the 'virtual' nature of criminal justice itself. Criminal justice processes are primarily directed at certain types of social harm and are largely targeted at lower-class and 'black crime', thus neglecting a whole series of more fundamental and more damaging harms. The justice meted out to such groups operates under a veil of due process and equality. Key players fail to acknowledge how their 'legal' decisions are intermeshed with ideology and presupposition. Yet this research has revealed how racialised outcomes are routinely produced in a system which largely denies their existence. Black people then are subject to a 'virtual justice' in which judicial impartiality is 'seen to exist', at least empirically, but yet retains the power to produce consistently discriminatory outcomes. British justice for black people is both present and absent: it in an inequitable form of equity.

Chapter 12

Conclusion

English law's claim that all stand equal under its umbrella, is in practice not true, and when one examines the relationship of black people to the criminal process, the law itself cannot escape criticism.

(Courtenay Griffiths, 15 September 1988, as quoted in Howard League, 1989)

It is clear that in terms of access, recruitment, training and development the criminal justice institutions and their professions have failed to deal with their well-established traditions of discrimination. Further, it is clear that racism is endemic in the policies, priorities and practices of the criminal justice institutions.

(Scruton and Chadwick, 1991: 176–7)

This research was concerned with the examination of issues of 'race' and criminal justice and sought to uncover evidence of the extent and nature of racism in the criminal justice process, particularly in relation to black defendants and bail decision-making in the magistrates' court. Therefore, this research sought to isolate a 'race' effect in court remand decisions in order to determine whether black defendants were subject to discriminatory practices particularly in view of their over-representation in remand prisons (see Introduction and Chapter 5).

The standpoint of critical criminology was adopted in this research but it has been acknowledged that the use of qualitative as well as *quantitative* methods employed is inconsistent with the critical tradition which largely rejects positivist research methods in favour of a qualitative and critical approach. Notwithstanding this apparent mismatch, the use of quantitative methods *in conjunction* with qualitative ones was deemed appropriate for this study (see Chapter 6).

The primary aim of the quantitative research was to test differential outcome

hypotheses between black and white male defendants who were observed during a bail survey carried out at two north London magistrates' courts servicing areas with a large proportion of black defendants (see Introduction and Chapter 6). The proposition was that, similar to other stages in the criminal justice process where black people tend to be subjected to harsher treatment than white people, black defendants are remanded in custody and have severe bail conditions imposed on them more than comparable white defendants. The secondary aim was to test a disparity hypothesis between the two courts in relation to bail decisions. The assertion was that bail decision-making, similar to other court decision-making, is largely dependent on prevalent 'court cultures' and thus subject to significant disparity.

The aim of the qualitative research was to uncover evidence that would aid an understanding of issues specifically concerning 'race' and bail/remand in addition to wider issues of 'race' and criminal justice. The importance of the qualitative analysis was that it provided insights into and a wider picture of the research areas that quantitative analysis is unable to reveal (see Chapter 6). The use of a combination of qualitative *and* quantitative methods was beneficial in this research because the qualitative analysis not only produced findings which were significant in their own right, but also enabled the results from both analyses to be compared (see below). In some instances the qualitative analysis was able to highlight issues not within the ambit of quantitative analysis and to provide useful data for the case studies included in the research findings.

At the outset and during this research, the literature search and review revealed that empirical attempts to isolate a 'race' effect in the criminal justice system have been riddled with methodological problems and fraught with contradictory findings. Although the weight of the evidence may suggest that the nature of justice meted out to black people has resulted in differential and unfavourable treatment, the exact nature and extent of discriminatory practice remains elusive. Discrimination in the criminal justice system can

neither be conclusively proved nor dismissed through statistical analysis – however sophisticated. This could partly be because ‘race’ and ‘crime’ are inherently unstable concepts (see Chapter 11). Although strong quantitative evidence persists to suggest that ‘race’ is a key variable in the criminal justice process which often operates to the detriment of black suspects, defendants and offenders, despite much empirical inquiry, the strongest evidence that needs explanation is the fact of black over-representation in the remand prison population.

Overall, previous studies of black people and criminal justice (see Chapters 2–3, and 5) and findings in this research on bail (see Chapters 7–10) have shown that a ‘race’ effect, although difficult to isolate, to some extent *can* be detected and measured in criminal justice procedures, decision-making, and outcomes. The ‘race’ of the defendant *does* appear to be an important factor in the determination of the rate and nature of contact with the criminal justice system. However, focusing on a single stage of the latter or on a key moment in judicial decision-making may be misleading since racial discrimination appears to be the result of cumulative and interactive effects within the criminal justice process. Arguably, the way in which decisions taken by the various criminal justice agencies ‘interact and compound each other’ need to be recognised (Fitzgerald, 1993: 38; Gelsthorpe, 1996: 135). Such ‘cumulative effects theory’ has been contested by Smith who argues that ‘it is not the case that bias has been demonstrated at every stage of [criminal justice] process’ (Smith, 1997: 750–1). According to Smith ‘the life cycle of the individual’ is a more relevant consideration:

For the young black male, there may be a cumulation of interactions which greatly increase the likelihood of entanglement with the criminal justice process and subsequent criminality.

(Smith, 1994: 1110)

Nevertheless there are strong indications that legal and social factors *combine* to

result in a more interventionist and punitive stance by the criminal justice system towards black people. However, empirical analysis alone is ahistorical, apolitical, and atheoretical and cannot be expected to reveal the full extent of racist practices. It only provides glimpses of one or some of its facets.

This research also sought to examine criminological theorising on 'race' and criminal justice. Critical criminology was identified as offering the most valid contribution to existing theoretical perspectives in this area, although arguably it does not go far enough in its explanations of black criminality in contemporary Britain. In an attempt to fill this gap, during the course of this study the concept of 'virtual criminality' was developed by the researcher largely from a critical criminology standpoint (see Chapters 4 and 11). The significance of such arguments is that the concept of the construction of racially-defined criminal 'others' (see Chapters 1 and 4) helps to identify and 'explain' the ideological basis of the perennial criminalization of black people over and above other ethnic groups necessary for the maintenance of capitalist social order. It is suggested that the police have been instrumental in the promotion of black people, and especially black youth, as criminal 'others', and have played a key role in the amplification of various stereotypes of black criminality.

Overall, there are strong indications from the review of literature on policing in Chapter 2 that the police as 'gate-keepers' of the criminal justice system (Reiner, 1989) perform an oppressive and controlling role whereby black people have been consistently subjected to discriminatory differential treatment on the grounds of 'race'. An examination of official statistics and studies on police procedures and practices reveals how the discriminatory application of police powers have in the past and continue to render black people particularly vulnerable to disproportionate adverse contacts with the police. As Reiner (1997: 1011) has pointed out, the evidence from numerous studies 'that black people are disproportionately at the receiving end of police powers is

overwhelming’.

Even preceding the main influx of black people in the 1950s and 1960s, police-black relations were characterised by conflict and hostility. In spite of the fact that in recent years a growing proportion of black people have been born in England and Wales, it still appears that black people are perceived by the police as particularly problematic in terms of effective policing methods. This is possibly because black people are deemed to be outside the ambit of the traditional relationship between the police and the working classes, although this relationship was not conflict-free.

According to Mhlanga it is now ‘beyond dispute’ that *the police treat black people differently than their white and Asian counterparts* given the disproportionate stops, arrests, prosecutions and acquittals rates that they face. This view is reinforced when the high levels of compensation to black people for wrongful arrest – for example, in 1989 over half of the £500,000 paid by the Metropolitan Police went to black people (*The Voice*, 6 March 1990) – and verdicts in the Court of Appeal of ‘unsafe and unsatisfactory’ convictions on black defendants, such as the Tottenham 3, the Cardiff 3 and the Hackney and Stoke Newington 4, are considered (Mhlanga, 1997: 143).

There is strong evidence that black people are more likely than other ethnic groups to have a higher rate of ‘adverse contacts’ with the police, but the contention that this is largely because of higher rates of offending among black people is highly disputable (see, for example, Reiner, 1997; and Smith, 1997). The overwhelming impression gained from previous research is that black people *are* subject to discrimination on the grounds of ‘race’ in the early stages of contact with the criminal justice process where the police are responsible for the decision-making. One explanation for this is that black people are more likely than white to attract the unfavourable exercise of discretion by the police in such decision-making where the scope for discretion can be wide.

The importance of wide discretion in policework was acknowledged in a report by

the Metropolitan Police in the mid-1980s (see Metropolitan Police, 1985). Hall *et al.*, referring to key issues raised in Wilson (1968), Lustgarten (1985) and Grimshaw and Jefferson (1987), have argued that 'discretionary enforcement of the law is an inherent and inescapable part of policing and functions at various levels within the police hierarchy' (Hall *et al.*, 1998: 17). Moreover, as Reiner has emphasised :

The problem is that research on police practice has shown that police discretion is not an equal opportunity phenomenon ... Those who are stopped and searched or questioned in the street, arrested, detained in the police station, charged, and prosecuted are disproportionately young men who are unemployed or casually employed, and from discriminated-against ethnic minorities.

(Reiner, 1997: 1010)

Overall, it is apparent that several major concerns have arisen as a result of discriminatory police policy and practice some of which can be summarised as follows (in alphabetical order):

- 1 dissatisfaction with the police complaints procedure and police disciplinary practice (Gordon, 1983: 45–8; IRR, 1987: 80–7; *The Weekly Journal*, 2 March 1995; *The Guardian*, 25 February 1999);
- 2 excessive stop and search and arrest rates, the use of 'excessive force' in carrying out arrests (IRR, 1979; Policy Studies Institute, 1983; IRR, 1987: 15–19; NACRO, 1991:14–8), and excessive stops of black car drivers (IRR, 1987: 12–15);
- 3 fabrication and planting of evidence (IRR, 1979: 52–3; IRR, 1987: 45–6);
- 4 forced entry of black homes by the police leading to violence and excessive armed police raids (IRR, 1987: 23–27) epitomised by the police shooting of Cherry Groce and the death of Cynthia Jarrett (IRR, 1987: 25–26) in 1985 and the subsequent death of Joy Gardner following police raids (see *The Guardian*, 26 February 1999);
- 5 inactive police handling of racist attacks (IRR, 1979: 18–26; Willis, 1981; Gordon, 1983: 48–59; Gordon, 1986; IRR, 1987: 56–71, Pilkington, 1988; Jefferson, 1991: 183 – see headnote Chapter 2; Hesse *et al.*, 1992; Bowling, 1993; Panayi, 1993; Hall *et al.*, 1998; *The Guardian*, 25 February 1999) epitomised by the New Cross Fire case (1981) (see *The Guardian*, 26 February 1999), and the Rolan Adams (1991), Rohit Duggal (1992), Stephen Lawrence (1993), Michael Menson (see *The Guardian*, 13 March 1999), and Ricky Reel (see *The Guardian*, 2 November 1999) murder inquiries;

- 6 increasing police paramilitarism (IRR, 1987; Jefferson, 1990; Cashmore and McLaughlin, 1991; Jefferson, 1991; Norris *et al.*, 1992);
- 7 ineffectiveness of police community relations (Gordon, 1983: 60–4), police ‘liaison’ schemes, and police-community consultative groups (IRR, 1987: 88–93);
- 8 miscarriage of justice cases involving black defendants, for example, Frank Crichlow (1992), the Cardiff Three (1992) and the Tottenham Three (1991–4), and also widely publicised cases of poor treatment of black people by the police, for example, the high award of damages to the international black athlete, Lindford Christie, who was asked by a police officer ‘What’s a nigger like you doing in an England tracksuit?’ (*The Independent*, 13 March, 1990 as quoted in Holdaway, 1991: 370; see also IRR, 1987: 85–7; *The Voice*, 6 March 1997 as quoted in Mhlanga, 1997: 143);
- 9 over-active police handling of black demonstrations, protests, riots and racial disturbances (IRR, 1987: 72–9; see also Scarman, 1981; Benyon, 1984; Gilroy, 1987a; Cashmore and McLaughlin, 1991; Keith, 1993b);
- 10 police concentration in black localities, including police over-manning of black events, raids on black clubs and meeting places (IRR, 1979; Gilroy, 1987a), the use of specialist squads, and targeting housing estates (IRR, 1987: 1–12);
- 11 police harassment, especially of black youths (Humphry, 1972; IRR, 1979; Gordon, 1983; Bryan *et al.*, 1985; Gilroy, 1987a; IRR, 1987; Jefferson, 1991: 183 – see headnote Chapter 2) and repeated harassment of certain black families (IRR, 1987: 27–29);
- 12 treatment of black people at the police station (IRR, 1979: 45–57; Gordon, 1983: 42–4; IRR, 1987: 38–45; NACRO, 1991: 18–23) and violence, medical neglect and deaths in police custody (IRR, 1979: 53–4; Gordon, 1983: 44–5; IRR, 1987: 46–51; Home Office, 1998: 10; see also *The Big Issue*, No. 334, 10–16 May 1999, pps. 16–17).

The Macpherson Report on the Stephen Lawrence Inquiry (Home Office, 1999a) published in February 1999 highlighted some contemporary concerns about policing and ‘race’ issues and attracted much media attention. The ‘overall aim’ was ‘the elimination of racist prejudice and disadvantage and the demonstration of fairness in all aspects of policing’ (Recommendation 2). It included recommendations (numbers shown in brackets) on complaints against the police (10, 58); police discipline (55–57); the definition (12–14), reporting and recording of racist incidents and crimes (15–17); the investigation (18–19) and prosecution of racist crimes (32–37); the handling of family liaison (23–28), First Aid training (45–47); and training in racism awareness and valuing cultural diversity (48–54).

The report also recommended that 'guidelines as to the handling of victims and witnesses, particularly in the field of racist incidents and crimes' should be developed (29–31 and 44). However, the startling announcement on the day following its release that 'an extraordinary blunder by the inquiry team allowed the publication of more than 20 names and addresses of police informants', and the discovery that those who defaced Stephen Lawrence's memorial stone overnight 'may escape justice because a surveillance camera supposedly monitoring the site was actually a dummy' (*The Guardian*, 26 February 1999), seriously called into question the integrity of the inquiry team and the police and provided little encouragement for *victims and witnesses* of racist attacks. As a result of the publication of informants' names, 18 families and individuals had to be rehoused at a cost of £650,000 (*The Guardian*, 24 July 1999).

In March 1999, each area covered in the report's recommendations was addressed in the *Home Secretary's Action Plan* which mainly concerned 'improvements in policing' (Home Office, 1999b: 1). The Home Secretary also acknowledged that this:

must be part of a wider context. We have a commitment to building an anti-racist society. Over the coming months the Government will be setting out how we will take forward that broader vision.

(Home Office, 1999b: 1)

Fine words for trying times – but it remains to be seen how far such promises are effectively implemented.

Previous commentators have pointed to the sustained and injurious existence of racist attitudes and beliefs in the police both at rank and file and command levels (Solomos, 1993; Smith, 1994). Thus one underlying reason for discriminatory police practice is explained in terms of the existence and manifestation of racism within the police force (Gordon, 1983; Smith and Gray, 1985). Writers have developed various theories to explain this phenomenon, for example:

- The 'occupational culture' approach (Cain, 1973; Holdaway, 1983; Lea, 1986; Graef, 1989; Holdaway, 1996; see also Hall *et al.*, 1998: 5–6, 17–18): while Keith acknowledges that this should not be underestimated, he warns of the dangers of exaggerating 'the causal powers attributed to it' in understanding police racism (Keith, 1993b: 6).
- The 'bad apple' approach (Coleman and Gorman, 1982).
- Institutional racism (Gilroy, 1982; Gordon, 1983; Lea, 1986; Keith, 1993b; McLaughlin and Murji, 1999; see below and Chapter 11).

According to Solomos the true extent of police racism has been difficult to fully reveal, but in spite of anti-racist initiatives it 'clearly persists' (Solomos, 1993: 134). Sir William Macpherson's report on the Stephen Lawrence murder inquiry acknowledged the existence of 'institutional racism' in the police force as well as other public institutions, but its definition can be criticised and the report's findings remain contested (see Chapter 11). The release of the report was heralded by some as a 'landmark in British race relations' but criticised was by others partly on the grounds that its criticisms of the police could have been stronger (*The Guardian*, 25 February 1999). For example, Doreen Lawrence, Stephen Lawrence's mother and prime mover in the campaign to bring his killers to 'justice', commenting on the report's findings, has asserted:

On racism – the report said that there was nothing that suggested or implied that all police are racist, even though they believe that institutional racism was apparent. It seems that we had all the officers who were racist handling our case. Well, no wonder that we are in the position we are today that no one is serving time for the murder of my son ... To me institutional racism is so ingrained and it is hard to see how it will be eradicated from the force ... This society has stood by and allowed my son's killers to make a mockery of the law.

(*The Guardian*, 25 February 1999)

Although Sir Paul Condon, Metropolitan Police Commissioner, accepted that '*unwitting prejudice*, ignorance and thoughtlessness had all played a part in the investigation', he nevertheless 'took comfort from the fact that Sir William had cleared the officers concerned of both corruption and *overt racism*' (*The Guardian*, 25 February 1999 emphasis added).

In view of the revelations of a subsequent television programme, which showed discussions between Condon and his senior advisers leading up to the publication of the report, it is clear that much preparation went into his response to it so that his refusal to heed calls for his resignation could be justified. Meetings between Condon and his closest advisers were filmed – on several occasions showing them laughing and joking about various aspects of the ‘spin’ that they were preparing for the media! – trying to plan a statement that would avoid what he described being seen to make a ‘humiliating “U” turn’ on the existence of racism in the police, and trying to downplay the issue of police racism by emphasising that the report had found ‘no deliberate racism’ but only ‘institutional racism’, and ‘corruption – not guilty’. Condon agreed that following these points, emphasis should be placed on what was to be done about racism in the future rather than dwelling on the past (‘The Siege of Scotland Yard’, Channel 4 TV, 30 March 1999). In August 1999 it was formally announced that Condon would retire in January 2000 and that John Steven, deputy commissioner of the Met. since May 1998 and former chief constable of Northumbria, would take over as commissioner (*The Guardian*, 27 August 1999).

Taking into account the manner in which the police officers initially attending the crime scene neglected to administer any first aid to Stephen Lawrence when he was bleeding to death, their stance towards Duwayne Brooks who was with him when attacked and their treatment of the Lawrence family, the continuing denial of the possibility that individual police officers could be ‘deliberately’ racist appears unsustainable. Arguably, racial stereotyping played a significant role in the police treatment of Dwayne Brooks which clearly cannot be relegated to just ‘*unwitting prejudice*’; for example, he recalls:

At the scene the police treated me like a liar, like a suspect instead of a victim, because I was black and they couldn’t believe that white boys would attack us for nothing ... They described me as violent, unco-operative, intimidating. They were stereotyping me as a young black male. They didn’t care about what I told them. They weren’t bothered that Stephen was lying there dying.

(*The Guardian*, 25 February 1999)

This assessment reflects Hall *et al.*'s arguments in a report on the Stephen Lawrence Inquiry: overall the statements in the Duwayne Brooke case considered by the writers 'at many critical points' were '*consistent* with the operation of racial stereotyping' (Hall *et al.*, 1998: 3).

The Macpherson Report also recommended that 'policing plans should include targets for the recruitment, progression and retention of minority ethnic staff' (64–66). The perennial inability of the police to attract more black recruits – in spite of various recruitment campaigns following the Scarman Report in 1981 – may reflect black people's loss of confidence in, and distrust of, the police. For example, Holdaway has drawn attention to black people's apprehension of racism within the force as a key factor contributing to the failure to increase recruitment from minority ethnic groups, which, he concludes, 'cannot be separated from issues about the quality of race relations within constabularies' (Holdaway, 1991b: 378).

On 31 March 1998 officers from minority ethnic groups made up 2 per cent of the police force in England and Wales; the highest ranking was an Assistant Chief Constable in Lancashire (Home Office, 1998: 37). This means that according to the 1991 Census (see Introduction) such groups were under-represented among police officers. In spite of the above-mentioned recommendations in the Macpherson Report, in August 1999 it was reported that the rate of recruitment from minority ethnic groups was 'falling' (*The Guardian*, 27 August 1999). However, as Gordon has pointed out, it is doubtful that a larger proportion of black police officers would improve police-black relations:

Even if more black people were to join the police, this in itself would be unlikely to make any significant difference to the policing of black people. Rather, it seems, a 'multi-racial' police force would give the police an increased legitimacy and an acceptable face in the policing of black people, without in any way altering the content of that policing.

(Gordon, 1983: 66)

From the above issues, it appears that for black people a major concern is not only *fear of crime*, but also *fear of the police*! Arguably the relationship between the police and black people is underpinned by the threat or use of unjustifiable police violence as well as police neglect and mishandling of racist crimes. Given the police track record on discriminatory practices, in addition to possible ideological functions of racism in the criminal justice system (see Chapters 1 and 11), whether the professed intentions of the Metropolitan Police's (1999) reforms (see *The Guardian*, 25 February 1999), or the Home Secretary's Action Plan (Home Office, 1999b) *will* or *can* be effectively carried out remains highly questionable.

Empirical research strongly suggests that black people's experience of policing has been largely negative, and that the overriding belief of black people is that they will not receive equal treatment from the police either as victims, suspects or defendants. At best, the image of the police as impartial is marred by their apparent propensity towards discriminatory treatment of the public on the grounds of 'race'; at worst, such discriminatory practice amounts to a police force which is riddled with racism to such an extent that black people are largely subjugated at the first point of contact with the criminal justice system. Moreover the shift towards paramilitarism in the police has facilitated and exacerbated the differential treatment of black people, the perceived need for special policing methods and targeting of black people being widely used to justify the intensification of this development. The historical evidence has shown, however, that strong black resistance to police brutality and oppressive policing methods continues to exist, and can periodically explode onto the streets of England and Wales.

Furthermore, some writers have raised issues about the *instrumentality of the police role* in the amplification of black criminality and in the criminalization of black people, especially black youth, as a reaction to a broader social 'crisis' which has influenced the development of policing from the 1970s onwards (Cashmore and McLaughlin, 1991: 12;

Hall *et al.*, 1978; Gilroy, 1987a; Solomos, 1988; see also Chapter 1). According to Jefferson one of the changes desired by the police which has been successfully implemented is the shift to 'a more coercive, paramilitarised policing response' to a political crisis:

The sorry history of police-black youth relations through the 1970s and 1980s bears witness to the role black youth have played in this moving up of a coercive gear.

(Jefferson, 1991: 175)

Solomos also points to the importance of the social construction of excessive involvement of black youth in street crime in the development of control strategies aimed at 'keeping young blacks off the streets', and also 'keeping the police in control of particular areas' identified as having a high crime rate (Solomos, 1993: 135; see also Keith, 1993).

Given that the majority of black people live in such inner-city areas, NACRO's conclusion that the 'highly visible' style of policing these areas 'inevitably' leads to more frequent police/black contact (NACRO: 1991: 18), and Jefferson's argument that black communities are deliberately targeted for 'intimidatory over-policing' (Jefferson, 1991: 183; see headnote Chapter 2) appear convincing. Similarly, Jefferson's claim that 'policing has itself now become part of the social disadvantages experienced by the powerless, *perhaps even its cutting edge*' (Jefferson, 1991: 188, emphasis added) is persuasive.

Whether increased measures of state surveillance and extended powers will be implemented and 'justified' in black and Asian communities following the bombing of Brixton and Brick Lane in the spring of 1999, and whether these events will be used as a springboard for an extensive public relations exercise by the police remains to be seen (see Introduction). Arguably one danger of police use of CCTV is that it provides patrolling officers the benefit of the support of colleagues (who are in a position to scan the area in

order to identify suspects) with the same socialised mindset as to who or what is suspicious, so that police discretion in the decision to take action is again unlikely to favour black 'suspects'.

The weight of the historical and empirical evidence strongly suggests that black people as victims, suspects, and defendants are dealt with to a disproportionate degree at the first point of contact with the criminal justice system. Moreover, the police have been instrumental in constructing the idea that black people are disproportionately involved in crime in general, especially violent crime. Discriminatory police policy and practice results in harsher treatment and outcomes for black people in the early stage of the criminal justice process which interacts with and adds to other instances of racially-biased decision-making at subsequent stages.

In Chapter 3 it was argued that the differential treatment experienced by black people in relation to the *police* interacts with further discriminatory practices in the *courts* resulting in differential and harsher outcomes in the criminal justice system. According to Gelsthorpe, research findings have shown that some of these differences can be explained by differences in the 'trajectory' of black defendants through the criminal justice system which can partly be explained in terms of a combination of 'legal *and* social factors *and* prejudice'. Thus racial discrimination in the criminal justice system can be best viewed in terms of the 'cumulative and interactive effects of disadvantage' (Gelsthorpe, 1996: 130-1; see also Fitzgerald, 1993: 38).

However, available research has produced contradictory and inconclusive findings on the existence and/or extent of racism in the courts largely owing to methodological failings. The development of studies on 'race' and sentencing, for example, has highlighted the following key points:

- The need for large samples with large proportions of correctly defined defendants from minority ethnic groups.
- The need to take all relevant factors into account, the need to use appropriate statistical techniques in the analysis of quantitative data so that accurate, tenable and generalizable conclusions can be drawn on the 'race' effect in the criminal justice process.
- The need to incorporate an analysis of relevant qualitative data.

Moreover, a sociological perspective which takes into account social and structural factors should be included in sentencing studies so that a better understanding can be achieved not only of the extent of discrimination but also of how it is produced in the criminal justice system (Hudson, 1989: 32–3; Mhlanga, 1997: 146–7). It has also been suggested that the scope of sentencing studies should be widened to include research not only on defendants and offenders, but also on 'the system that reproduces and increasingly justifies such discriminatory treatment' (Shallice and Gordon, 1990: 36). Although difficulties in isolating a 'race' effect in court decision-making has been hindered by methodological deficiencies, studies such as Hood (1992) and Mhlanga (1997) employing more sophisticated statistical techniques have produced strong evidence that discriminatory practices in sentencing operate to the detriment of black defendants when all relevant factors are taken into account.

Official statistics confirm that black but not Asian or white people are over-represented in the prison population. As one commentator has pointed out, 'the figures cast a shadow over British justice' (*The Independent*, 11 June 1997). However, explanations for such differences remain contested. The majority of studies have been atheoretical and have failed to take into account socio-structural perspectives which may help to explain ethnic differences in criminal justice outcomes. For example, it may be the case that black people are viewed as more of a possible threat to the social order than Asian or white people, and that predominant racial stereotypes of black criminality have resulted in an official response which seeks to control and/or contain black people to a

greater extent than their Asian and white counterparts (see Chapters 9 and 11).

Black people are over-represented in the prison population, but largely under-represented among stipendiaries, justices' clerks, court clerks, on juries and in the judiciary, as well as in the higher echelons of the legal profession and criminal justice agencies (see Chapter 3). This anomaly may also facilitate and/or add to discriminatory practices in the courts. However, in order to have any chance of making any impact on the criminal justice process, black representation in criminal justice agencies, the legal profession, and the magistracy and judiciary must be 'substantive'. The degree to which the different criminal justice agencies may or may not act as a unified system can also be questioned. While there may be some level of autonomy, decisions made in one area have implications for others, particularly in view of the discretionary nature of criminal justice decision-making. Similarly the 'independence' of the CPS can be questioned in view of possible tendencies to follow police decisions on bail, prosecutions, and apparent reluctance to pursue the perpetrators of racist attacks.

Arguably, discriminatory practices in the different criminal justice agencies and in the courts form inter-dependent links in the chain of criminalization of black people and increase the likelihood of harsher criminal justice outcomes. Court decision-making up to and including sentencing may be unduly influenced by racial bias in many instances partly because black defendants are more likely than their white counterparts to be the recipients of unfavourable discretion exercised by predominantly white criminal justice decision-makers (see below). Similar to the position adopted by the police, there is also substantial evidence that a more interventionist stance is adopted by the courts in the case of black people who:

are dealt with as suspects, defendants and offenders to a disproportionate degree. Moreover, the *prima facie* evidence is that *black people are treated more harshly at each stage of the criminal justice process.*

(Dhokalia and Sumner, 1993: 34 emphasis added).

Notwithstanding the many instances of methodological inconsistencies and inadequacies in existing research, it can be concluded that the weight of the evidence strongly suggests that discriminatory practices operate *throughout* the criminal justice process and that there are unexplained ethnic differences in criminal justice outcomes. For example, Reiner has argued that although it is impossible to establish 'beyond doubt' that differential treatment of black and white defendants exists at each stage of the criminal justice system:

the quantity and quality of this evidence is such as to render any doubts about discrimination fanciful rather than reasonable.

(Reiner, 1989: 12)

Black people's experience of such discrimination has led to a loss of confidence in the criminal justice process, and although no doubt greatly concerned about other areas of disadvantage, criminal *injustice* is likely to be high on the agenda of concerns about racism in contemporary society. 'Institutional racism' in the criminal justice system is most readily inferred from the prison statistics showing the stark over-representation of black people. As one commentator has observed:

What it adds up to is a criminal justice system which treats blacks worse than it treats equivalent whites. And since the system's ultimate sanction is the deprivation of liberty, it is hardly surprising that the injustice of our criminal justice system stands at the top of many black people's grievances against British society and its institutions.

(*The Guardian*, 19 June 1986 as quoted in Shallice and Gordon, 1990)

Arguably, such discrimination is inter-related to wider social and state control issues which have ideological implications:

The criminalisation of black communities has proceeded apace and has taken on new forms in the current period. There is widespread evidence that the criminal justice system is now one of the key mechanisms by which ideas about racial difference in British society are reproduced.

(Solomos, 1993: 133).

The weight of existing statistical and empirical evidence points to the conclusion that black people *do not* receive fair and equal treatment in the courts. However, studies reviewed in Chapter 5 have shown that there are many factors besides 'race' that can influence the court's decision to remand a defendant in custody. These must also be taken into account in determining whether there is a 'race' effect. Several identified the police decision on bail and the seriousness of the offence as significant factors. This raises the question as to whether the first point of contact with the criminal justice system, namely the police, in their apparent readiness to refuse bail to black people and to insist on serious charges being pursued, has a significant knock-on effect on the court remand decision.

Furthermore, it can be argued that black defendants may suffer harsher outcomes in bail decision-making as a result of the less favourable exercise of discretion by the court than their white counterparts, similar to arguments regarding their position at other stages of the criminal justice process such as sentencing (see for example, Hood, 1992). Previous research has drawn attention to the key role of discretion in bail decision-making. For example, it has been argued that:

Stripped of its rhetoric, the Act does little more than encourage magistrates to treat the question of bail seriously. The criteria are broadly the same as before; *the discretionary element is still substantial.*

(Roshier and Teff, 1980: 113–4 emphasis added)

This assessment concurs with both quantitative and qualitative findings in this research (see Chapters 7–10). It appears that the role of *discretion* is pivotal in relation to possibly discriminatory and unfair outcomes for black people in bail and other criminal justice decision-making. Arguably, discretion may be applied more rigidly in the case of black people. In research on minority ethnic groups for the Royal Commission on Criminal Justice, Fitzgerald drew early attention to the 'scope for discrimination in the exercise of discretion' noting that:

it could arise if 'the letter of the law' was followed in cases involving ethnic minorities, while more flexible use of discretion ensured that whites were treated with greater lenience. Clearly there is scope for guidance covering the use of discretion.

(Fitzgerald, 1993: 37)

Smith has also highlighted the possibility of discrimination against minority ethnic groups when the 'unavoidable element of discretion' comes into operation where 'apparently neutral' decision-making criteria are applied (Smith, 1997: 754). He also acknowledges the significance of the impact of previous decisions in the criminal justice process. For example, according to Smith (1997: 735) 'decisions at later stages may be influenced by a need to justify a decision taken earlier'. However, he rejects the notion put forward by some writers (Reiner, 1989, 1993; Gelsthorpe, 1996; see Introduction) that discrimination is 'cumulative' in the criminal justice system (Smith, 1997: 754–5).

Nevertheless, arguably, the 'knock-on' effect of previous decisions, where discretion has played an important part, appears to be of key consequence for suspects and defendants from minority ethnic groups. Discretion can be brought into play when criminal justice officials consider both legal and non-legal factors. As Fitzgerald has pointed out:

complex questions arise about legal factors which, while apparently justifiable, adversely affect ethnic minorities and are themselves the product of discretionary decisions at an earlier stage in the process.

(Fitzgerald, 1993: 37)

Hood's (1992) study, which used sophisticated statistical techniques, persuasively argued that when all variables affecting the custody decision at the sentencing stage are taken into account, having been previously remanded in custody [a legal variable] is one of those 'most powerfully associated with receiving a custodial sentence'. While other variables may influence the decision to remand and impose a custodial sentence, it was argued that they would have to be 'very potent to explain all the "remand in custody

effect” which was found to be ‘very strong for all ethnic groups’ (Hood, 1992: 146; see also 50, 51: Table 5, 149, 205). Therefore, *adverse decisions at the bail/remand stage may have a significant impact on subsequent court decisions on sentencing* since the propensity for black defendants to be remanded in custody increases the risk of their ultimately receiving a custodial sentence.

Notwithstanding the limitations of *Prison Statistics* analyses and some methodological inadequacies in existing research, the scales of justice may be tipped against black people at the bail/remand decision stage of the criminal justice process which may even result in harsher outcomes at subsequent stages. However, more research needs to be undertaken in this area before firm conclusions can be made (see below). Whether the eyes of justice are blind or blinkered in relation to bail/remand decisions for black defendants, particularly in view of the high numbers who are subsequently acquitted or do not receive custodial sentences, was one of the key questions addressed in this research. Overall, existing research refutes any suggestion that black people are worse bail risks than their white counterparts, and while the individual circumstances of each case may affect defendants’ chances on bail, there are strong indications that bail *is* unreasonably withheld from black defendants in some cases.

During the early stages of this research a multivariate approach to the quantitative analysis was considered to be of key importance since it can facilitate the isolation of a ‘race’ effect in criminal justice decision-making (see Walker, 1987a; Hood, 1992; Mhlanga, 1997: 6), and it can be concluded that this is the preferred approach to this type of research area. However, it is acknowledged in criminological research that:

even if all possible factors were incorporated, the statistical evidence alone cannot prove or disprove the existence of discrimination or fairness (*e.g.* Walker 1987a; Hudson, 1989; Fitzgerald, 1991) *unless supported by data of a qualitative nature.*

(Mhlanga, 1997: 6 emphasis added)

Therefore, in this research it was considered essential to undertake a qualitative analysis of relevant views of a representative sample of persons involved in the bail system. It was felt particularly important to include the views of black defendants, since the views of those 'on the receiving end' of criminal justice outcomes have often been neglected in previous criminological research.

In order to test the discrimination hypotheses, a multivariate analysis of the quantitative data was undertaken. The statistical technique of logistic regression was used to assess the probability for black and white male defendants of being remanded in custody by the court as against the probability of being granted bail, while controlling for the influence of several legal and non-legal variables. In relation to bail conditions it was not possible to employ this technique owing to the large number of defendants who had no bail conditions imposed so the quantitative analysis relied on crosstabulations. Two and three-way crosstabulations on relevant data was also undertaken in relation to the disparity hypothesis and rates of remands in custody at the two courts were compared with the general population in the areas where they were situated. An analysis of qualitative data from a series of semi-structured interviews with defendants and criminal justice practitioners was also undertaken to provide further elucidation on discrimination in criminal justice generally, and specifically on bail issues.

Without taking into account other variables, the findings in Chapter 7 suggested that the decision to grant bail was not largely affected by subsequent court appearances, and that *throughout black defendants were more likely to be remanded in custody than white defendants*. Since the percentage difference between the rates of refusal of bail on first appearance and all remands in custody during the period of observation of the cases was 5 per cent higher in both instances for black defendants, this initially raised the presumption of a 'race' effect on the court's decision on remands in custody. However, this initial analysis could not fully test the discrimination hypothesis since other variables which

could have influenced the remand decision were not taken into account.

Other main findings from the initial data analysis were:

- Younger defendants were more likely to be remanded in custody than older defendants.
- Black defendants under 26 were more likely to be remanded in custody than white defendants under 26 *and* black and white defendants over 26. Therefore, overall, it is implied that *young black defendants* were most likely to be remanded in custody.
- Black defendants were more likely to be refused bail on first appearance than white defendants: this was more marked where the first appearance was before *justices*, since black defendants were twice as likely as white defendants to be refused bail on first appearance by justices than by a stipendiary. It could be implied that racial disparity in decision-making on bail at the first court appearance may have diminished, the more ‘professional’ the magistrate.
- Black defendants were more likely to be refused police bail than white defendants, but white defendants were denied bail at a higher rate than black defendants where police bail had been refused on first appearance and at subsequent hearings. This could suggest that the court was more likely to differ from the police decision on bail in the case of black defendants, whereas it was more likely to follow it in the case of white defendants, especially by a stipendiary on first appearance.
- Although there was some evidence that white defendants refused police bail were at greater risk of being remanded in custody than black defendants, it cannot be concluded that police bail was irrelevant in terms of a possible ‘race’ effect in the court bail decision, because in just over half of the cases the police bail decision was unknown, and the effects of all the other variables were not taken into account.
- The risk of being remanded in custody is intrinsically linked to the type and seriousness of *the most serious offence charged*.
- Black defendants are at *much greater risk of being remanded in custody* than white defendants when charged with Blackmail, Robbery, Kidnapping, Supplying drugs, Public disorder, Household burglaries, Fraud and handling or Minor violence. Noticeably three of these offences (Robbery, Public Disorder and Supplying drugs) correspond to dominant racial stereotypes of black criminality – the ‘mugger’, the ‘rioter’ and the ‘Yardie’ (see Chapter 1).
- White defendants are at *greater risk* of being remanded in custody than black defendants when charged with Serious violence and other grave crimes, GBH S.20, Other burglaries, Theft, or Other offences.
- The risk of being remanded in custody is closely linked to the overall seriousness of all charges in relation to maximum sentence. Black defendants are at greater risk of being remanded in custody than white defendants when *the overall seriousness of all charges* is taken into account.

Previous studies have also linked the over-representation of black offenders in the *sentenced* prison population to the serious nature of offences generally (Walker, 1988; Hudson, 1989; Hood, 1992; Dholakia and Sumner, 1993; Smith, 1994), and to certain kinds of offences (Mhlanga, 1997 – see headnote Chapter 7) such as Robbery and Drugs offences in particular (Hood, 1992; Home Office, 1995). Similarly, the *type of offence* (Home Office, 1986a; Macleod, 1991), and *seriousness of offence* (Hood, 1992) has been linked to the over-representation of black defendants in the *remand prison population* which concurs with findings in this research. It could be implied that the perception of black criminality may be *intensified* which partly results in higher rates of custody for black defendants charged with a certain type and seriousness of crime.

In Chapter 7 a comparison of the findings of the two courts in the initial data analysis showed that:

- Overall, rates of remands in custody were slightly more severe at Haringey than at Highbury. This could be attributed to the significant difference between the type of bench sitting at each court which was measured in terms of first appearances which were predominantly before a stipendiary at Highbury, and justices at Haringey.
- When justices dealt with the case there was little difference between the courts in rates of refusals of bail on first appearance, but the difference was considerable with stipendiaries (30 per cent more refusals were at Haringey).
- Since there was little change in the rates of remands in custody following defendants' first appearance (only 4 additional remands in custody at Highbury), it can be concluded that the original decision on bail was crucial in that subsequent bail applications tended not to vary from it.
- Rates of bail refusals on first appearance was higher for black defendants at each court, although it was slightly more marked at Haringey.
- A major distinction between the courts concerned the position of *young black defendants*: black defendants under 26 were remanded in custody at a higher rate than white defendants at each court, but the difference (25 per cent) was considerable at *Haringey*.
- Furthermore, when compared to their proportion in the general population of the area, *white males were not over-represented* in remand in custody rates at each court, whereas *black males were over-represented*: all black males resident in Hackney were remanded in custody by *one and a half times* their proportion in the population, whereas all black males resident in Haringey were remanded in custody by *almost three times* their proportion in the population

- When rates of remands in custody of defendants resident in the two court areas were compared in terms of 'race' and age, *young black males at Haringey* constituted the most over-represented group given that black males aged 10–24 were remanded in custody by *four times* their proportion in the population; black males at Highbury aged 10–24 *and* black males aged 25–74 at Haringey were remanded in custody by *twice* their proportion in the population

Given the findings in the first two points above, the disparity hypothesis was only partially supported – differences in 'court cultures' were more linked to the *type of bench* hearing the case rather than being geographically-specific.

In Chapter 8 the logistic regression model identified 6 key factors (4 statutory and 2 non-statutory) as having a significant impact on the remand decision:

- 1 The most serious charge against the defendant.
- 2 The seriousness of the charge(s) against the defendant in relation to maximum sentence.
- 3 The offence charged committed while already on bail.
- 4 Number of previous convictions.
- 5 Refusal of police bail.
- 6 Psychiatric condition brought to the attention of the court.

1–4 above involve legal factors, that is statutory criteria under the *Bail Act* 1976 (see Chapters 5, 9 and Appendix 1). The type and seriousness of the charge(s) in addition to being selected by the logistic regression model also provided the strongest evidence of those variables which were highly associated and statistically significant in crosstabulations with 'race' and remanded in custody in the initial data analysis (see Chapter 7). This also concurs with findings in the qualitative analysis on the significance of 'the nature and seriousness of the charge' in bail decision-making (see Chapter 9).

The offence charge committed while on bail, just failed to reach statistical significance in crosstabulations with 'race' in the initial data analysis, but also concurred with qualitative findings (see Chapter 9). This issue of offending while on bail has been

raised as a key concern (see Chapter 5). The selection of the defendant's previous convictions by the logistic model as having significant influence on the remand decision also concurs with qualitative findings (see Chapter 9) but involved the analysis of limited data (see Chapter 7).

Although refusal of police bail does not constitute a *statutory* criterion in the consideration of bail, it is 'legal' in the sense that it arises from a previous decision made in the criminal justice process, that is by the police. The refusal of police bail was identified in some previous studies on bail as a key factor effecting the court bail decision (Bottomley, 1970; King, 1971; Simon and Weatheritt, 1974; Jones, 1985; Shallice and Gordon, 1990; see also *New Law Journal*, 17 May 1991) but not in other studies (see Chapter 5). In this research, the question of the impact of the refusal of police bail on a defendant's chances of obtaining court bail was also noted in the qualitative analysis (see Chapter 9). Findings from the initial data analysis suggested that risk of being remanded in custody is greater where police bail is refused, but differences in refusals of police bail and remands in custody were not statistically significant when crosstabulated with 'race'. In fact a higher proportion of *white* defendants were remanded in custody where police bail had been refused. However, results from the initial data analysis on police bail were inconclusive *because in over half the cases the police decision on bail was unknown* (see Chapter 7).

Therefore, initially the findings of the logistic regression analysis did not appear to support the discrimination hypothesis because 'race' was *not* selected by the model as having a significant impact on the remand decision. However, 'race' was highly associated with the 2 key variables – 'the most serious charge' and 'the seriousness of the charge(s)'. The 'race' effect may have been 'masked' not only because of this, but also because the logistic regression selection procedure would have favoured the selection of variables with several categories, such as 'the most serious charge' and 'the seriousness of

the charge(s)', whereas 'race' only has 2 categories (see Chapter 8; Appendix 7).

Arguably, further investigation of the data by means of analyses of the Total Probability of Remand in Custody Score ('TPRICS') 'unmasked' a 'race' effect. These showed that:

- The majority of all cases were low risk – including a slightly higher proportion of black defendants than comparable white defendants.
- Defendants were at greater or less risk of being remanded in custody according to their TPRICS level.
- Twice the proportion of black defendants than comparable white defendants were remanded in custody in *low risk cases*.
- In high *and* low risk cases, black defendants were remanded in custody at significantly higher rates than comparable white defendants.

The findings of the TPRICS analysis suggested that discretion was of key importance in low risk cases and, overall, largely supported the discrimination hypothesis.

Quantitative and qualitative analyses in Chapter 10 focused on the question of bail conditions. This chapter explored the full extent of the court's power to restrict the defendant's movements/safeguard the public by withholding bail, imposing bail conditions, or a combination of both, and any differences in terms of 'race'. The main findings were:

- Just over a third of defendants were granted unconditional bail on first appearance.
- Just under half of defendants were granted *conditional bail* at some point in the proceedings
- Just under a fifth were remanded in custody throughout the time the case was observed.
- There was little difference in terms of 'race' in relation to defendants remanded in custody *throughout the case*, but a higher proportion of black defendants than white defendants were remanded in custody *but granted conditional bail at some point during the proceedings*.
- Out of defendants *not* remanded in custody, black defendants were *slightly less likely* to be granted unconditional bail than white defendants, and *less likely* to be granted conditional bail, this difference reaching statistical significance.

- Overall, bail conditions for black defendants were more severe than for white defendants particularly in the case of defendants refused bail on first appearance and subsequently granted conditional bail.
- Overall, black defendants were more likely to have High severity level bail conditions imposed than white defendants.
- The overriding impression that emerged from the interviews was that black defendants *are* subjected to harsher bail conditions than their white counterparts, although in some instances discrimination may be *indirect*, and hidden.
- Both the quantitative *and* qualitative analysis identified *young* black defendants under 26 as being particularly likely to be subjected to harsher conditions of bail.
- When the most serious charge was taken into account, the quantitative analysis revealed differences between black and white defendants subjected to *high severity level* bail conditions: the most striking difference was in relation to Public disorder offences – black defendants with the most serious charge in this category of offence were *significantly more likely* to have high severity bail conditions imposed than white defendants.

Therefore, the quantitative analysis supported the proposition that bail conditions for black defendants are more severe than for white defendants, particularly in relation to *young* black defendants. However, this only applied to those defendants *remanded in custody but granted conditional bail* at some time during the case but not in relation to defendants *granted conditional bail on first appearance and not remanded in custody*. The qualitative analysis suggested that there was some indication that bail conditions were harsher for black defendants, especially young black defendants, than for white defendants, but the findings were inconclusive owing to the limited scope of available data. Notwithstanding the limitations of the quantitative analysis and taking into account that the individual circumstances of each case may largely determine the severity of bail conditions imposed, the weight of evidence suggests that ‘race’ may have some overriding influence on court decision-making on the nature and scope of such conditions. This may result in an increased propensity for black defendants to be subjected to more severe bail conditions than white defendants.

Inevitably there are problems in isolating ‘race’ as a variable as discussed in previous research (Gilroy 1982, 1983, 1987b; Fitzgerald, 1993; Holdaway, 1997). Some of these

were raised in the literature review in this research and in both the quantitative and qualitative analysis. In particular, the logistic regression revealed the tendency for 'race' to appear 'masked' in some circumstances. However, a total rejection of statistical analysis on 'race' issues could amount to 'throwing the baby out with the bathwater'. Some statistical techniques, especially those with a multivariate approach, can be a useful tool in providing pointers on the existence, nature and extent of racism. Nevertheless, as noted at the outset of this chapter, it is acknowledged that the use of quantitative methods conflicts with the approach of critical criminology, the standpoint from which this research was undertaken (see also Chapters 4 and 6).

The qualitative analysis in Chapter 9 suggested discrimination in criminal justice decision-making is often covert and facilitated by the permeation of negative stereotyping of black people which can have a detrimental effect on the use of discretion in black defendants' cases. It concurred with the quantitative research in identifying the composition of the bench (the type of magistrate hearing the case) as a key 'non-legal' factor influencing remand decisions in the case of black defendants. Two other 'non-legal' factors, the quality of legal representation and court area, were also identified as having a significant influence on black defendants' chances of bail.

It was clear that the views of defendants, lawyers, and probation officers conflicted with those of the CPS, the magistrate and the court clerk. The former were largely persuaded that in spite of various difficulties in isolating 'race' as a determining factor in bail and sentencing, discriminatory practices on the grounds of 'race' pervaded the criminal justice system, in stark contrast to the latter who adopted a 'colour-blind' stance. Overall, the qualitative data supported the proposition that 'race' *was* a key factor taken into account by the court in relation to statutory and non-statutory considerations in remand decisions, and that black defendants fared worse than their white counterparts, with the possible exception of Irish defendants. The overriding feeling expressed was that

punitive connotations were involved in some instances where black defendants were remanded in custody (Chapter 9). This also applied to informants' opinions on why black defendants tended to be subjected to more stringent bail conditions than white defendants (Chapter 10).

Therefore, the quote in the headnote to Chapter 9 that being black 'makes it worse' in terms of treatment by the courts, seems to be justified. Overall, there are strong indications from the qualitative analysis that 'race' is a determining factor in bail and sentencing which disadvantages black defendants a stage further than other socio-economic factors. However, a 'cumulation of factors' may also be influential (cf. Gelsthorpe, 1996: 133-5; Fitzgerald, 1993:38). Essentially it appears that you can take 'race' out of criminal justice decisions, in that it is unlikely that racial consideration will be made known as the basis of decisions in open court, but you cannot take the racism out of the decision-makers. This conclusion from the qualitative analysis concurs with the quantitative conclusions in this research that racism is largely obfuscated in the criminal justice system – but this does not mean that it is not there. When the 'mask of neutrality' of criminal justice is pulled aside, the veneer of 'fairness and respectability' which lies beneath it also appears to be showing signs of cracking so that racist undertones become more and more exposed.

The notion of the 'ideological construction' was addressed in Chapter 11 as a means of deconstructing the concepts of 'race', racism and 'crime'. Many of the studies addressed in the literature review in this research emanated from the administrative criminology tradition which was largely atheoretical and developed from concerns of policy and practice. In contrast to this stance, radical criminologists' theorising identified marginalisation as an important area of interest.

Critical criminology emphasised the centrality of material as well as ideological relations. Its analyses of the nature and extent of black criminality, has involved

considering whether it is an ideological fiction or construct playing a vital role in the justification of the over-representation of black people in the criminal justice process, and the legitimization of increases in 'law and order' strategies. Critical criminologists have made a significant contribution to the debate on the concepts of 'race', 'racism' and 'crime' as ideological concepts, and have drawn attention to the implications surrounding the fusion of 'race' and 'crime' as an ideological construction, such as the notion of 'black crime'. Such concepts help to 'explain' the ways in which black people have been identified as particularly crime-prone, and as a special threat to the public order. Notwithstanding the contested and complex nature of these concepts, arguably they are inextricably linked to the maintenance of a capitalist social order. Socio-economic, political and technological developments have entailed the growth of the unemployed and unemployable, many of whom are from minority ethnic groups – especially black people – and the most likely targets for rigorous control strategies.

It has been argued in this research that existing critical criminology's theorising on 'race' and crime does not go far enough to 'explain' the implications of black criminality. Largely drawing on previous theories from critical criminology, however, the notion of 'virtual criminality' is suggested as a way forward:

- Virtual criminality is defined as a state of affairs whereby a person or group of persons is perceived by a wide section of society as having a high propensity towards criminality and as being highly likely to be involved in criminal activity or a threat to public order.
- Virtual criminality arises as the result of the appearance or perception of reality and is facilitated by the ideological construction and media misrepresentation of the criminality of marginalised groups over and above the extent of their true involvement in criminal acts.
- This is promulgated by and serves the interests of powerful groups in society because it helps to justify increases in control and deflect attention away from their own criminality.
- Black people in particular are propelled into a state of virtual criminality because of the impact of 'race' and 'crime' as ideological constructions and the racist orientation of the criminalization process which perennially focuses on black people as highly visible and vulnerable targets (see Chapter 11).

The concept of 'virtual criminality' represents a developing discursive framework capable of integrating previous themes in criminology. It seeks to further an understanding of why and how factors such as 'race', racism, colour, class, culture, 'lifestyle' and gender may result in black people being treated differently by the criminal justice system. Five consequences arising from black people being ideologically-constructed as 'virtual criminals' are that:

- A wide section of society assumes high levels of black criminality to be *persistent* and *extensive*: disproportionate levels of criminal proceedings against black people plays a key role in establishing this.
- Especially in view of contemporary trends in the drug economy which has given rise to the powerful 'Yardie' stereotype (see Chapter 1), black people's criminalization as perpetrators of drug and drug-related crime leads to black criminality being associated with increasing levels of violence.
- It increases the probability of criminalization and incarceration of black people and of detracting attention away from socio-economic grievances
- It increases the probability that black people as victims of crime – particularly in the case of racist attacks – will not be effectively dealt with by the criminal justice system.
- It helps to legitimate increasingly severe methods of control, especially in relation to marginalised groups in society and black people in particular (see Chapter 11).

Overall, the impact of 'virtual criminality' represents a key facet of social control in the contemporary social order and underpins the dynamics of racial stereotyping of black people in the criminal justice process. It also helps to establish the parameters of 'collective consciousness' about the dangers of 'excessive and increasing' lower-class crime and dominant views of 'virtual justice'. It draws 'race' and racism more central in the criminal justice agenda. Arguably, the maintenance of certain sections of society, and especially black people, in a state of 'virtual criminality' is thus a key requirement of an advanced/global capitalist social order.

'Virtual criminality', therefore, helps to perpetuate racism – institutional, institutionalised, or otherwise – and racism helps to maintain the prevailing capitalist

social order. A racist social order is conducive to capitalism similar to a sexist social order in that their maintenance and continuance are within the interests of the economically and politically powerful. Thus the maintenance of a criminal justice system which is 'race', class and sex oppressive is imperative, and the ideological construction of 'virtual criminality' plays a significant role in this endeavour.

This research has helped to reveal the entrenched nature and widespread extent of racism in the criminal justice process and has suggested that black defendants clearly are subjected to discrimination in the bail system. However, as with other stages of the criminal justice process, the manner in which such racism operates is largely obfuscated. Nevertheless, as NACRO has put it, the end result is that the criminal justice system plays a key role:

in thwarting the legitimate aspirations of black people in this country, who are still seen as 'immigrants' rather than as fellow British citizens'.

(NACRO 1991: 46).

Discriminatory practices within it are like an insidious disease for which there may be no cure unless there is a radical overhaul of the criminal justice *and* socio-economic system.

Previous research has shown that the 'race' effect in the criminal justice process is extremely difficult to isolate and this research on bail has also highlighted the difficulties in trying to pinpoint evidence of discrimination purely on the grounds of 'race'. Allegations of racism being 'endemic' in criminal justice institutions, for example, as suggested by Scraton and Chadwick (1991) in the chapter headnote, will not be taken seriously in the absence of persuasive evidence. Such evidence could be deduced from well-designed and executed quantitative research, which can assist in trying to isolate a 'race' effect in the criminal justice process, but only if combined with convincing qualitative data.

It is clear that studies on 'race' and criminal justice have shown that exposing the operation of racism is complex. Attention has been drawn to the dangers of inferring differential treatment or discrimination on the grounds of 'race' from an analysis of official statistics or studies on the court system unless other non-legal *and* legal relevant variables are taken into account (see, for example, Home Office, 1992a: 5; Hood, 1992: 6; Mhlanga, 1997: 6). The results from many of the studies have been inconclusive owing to methodological problems and inconsistencies and the limited nature of the analyses. Some of the more recent studies have sought to overcome these difficulties by utilising a multivariate analysis by means of more sophisticated statistical techniques. It has also been argued that in research on sentencing there is a need for:

middle-range research which fills the gap between observational studies, and large-scale surveys where the aggregating of data obscures the nuances of sentencing behaviour.

(Hudson, 1989: 32)

Therefore, although some evidence has been produced in this and previous research which suggests that black defendants *are* subjected to discriminatory treatment, more wide-scale research employing a multivariate approach, qualitative analysis and a sociological perspective is needed to help to explain how and why black defendants are less likely to be granted bail than white defendants. Why are black people *so over-represented* in the remand prison population? Are black defendants *really* such bad bail risks? Essentially there is a need to determine further whether 'race' itself is a factor taken into consideration in the remand decision.

Such methodology could also be usefully used to investigate other pressing issues on 'race' and the criminal justice process such as the over-representation of black people in the sentenced prison population. The position of black women and criminal justice, the penal system and 'race' issues, and the treatment of asylum seekers, none of which were

addressed in this study, and the position of young black people could also be usefully investigated in further research. Notwithstanding the range of differences between the UK and the USA, further research comparing the position of black people and racism in the criminal justice system in these two countries, and a comparison of the treatment of different minority ethnic groups in the criminal justice process within the UK, could also raise a number of important issues.

The tendency for black defendants to be subjected to *higher rates of remands in custody and harsher bail conditions* suggests the existence of discriminatory practices in the criminal justice process generally, but the implications of such differential treatment for *untried* defendants is particularly insidious because they are still presumed innocent in the eyes of the law. This research has illustrated the complexity of the obfuscation of racism in the criminal justice system (which could also apply to other institutions in society such as the education system). Although the 'race' effect in the court's decision to remand a defendant in custody is elusive, it is not illusory, and although it is difficult to detect, it is not undetectable.

Appendices

Appendix 1

The Law on Bail

The *Bail Act*, s. 4 establishes a general right to bail of accused persons and others such as those remanded after conviction for inquiries or reports, or brought before the court for the breach of a probation or community service order (see Mitchell, 1979: 133). The *Criminal Justice Act* 1988, s. 155 gave magistrates the power to remand defendants in custody for a period up to 28 days. The maximum custody time limit for a defendant on remand is 70 days.

Exceptions to the general right to court bail are laid down in Schedule 1, Part 1, of the Bail Act which lists those criteria which, if fulfilled, will justify a decision to refuse bail. For imprisonable offences, these are as follows:

The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would:

- a) fail to surrender to custody, or
- b) commit an offence while on bail, or
- c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person (paragraph 2).

In relation to decisions under paragraph 2 the court must have regard to the following considerations when deciding whether one or more of the criteria for refusing bail has been fulfilled:

- a) the nature and seriousness of the offence or default;
- b) the character, antecedents, associations and community ties of the defendant;
- c) the defendant's record as respects the fulfilment of his obligations under previous grants of bail in criminal proceedings;
- d) except in the case of a defendant whose case is adjourned for enquiries or a report, the strength of the evidence of his having committed the offence or defaulted, as well as to any other things which appear to be relevant (paragraph 9).

Bail also need not be granted in the following circumstances:

- i) where the court is satisfied that the defendant should be kept in custody for his/her own protection, or in the case of a child or young person, for his/her own welfare (paragraph 3);
- ii) where the defendant is already serving a custodial sentence (paragraph 4);
- iii) where it has not been practicable to obtain sufficient information with which to make a decision, having regard to the time when the proceedings were commenced (paragraph 5);
- iv) where the defendant, having previously been released on bail in connection with the current proceedings, is arrested under s.7 for absconding or breaking bail conditions (paragraph 6);
- v) an adjournment is ordered for enquires or reports and the court believes that it would not be practicable to do so without keeping the defendant in custody (paragraph 7).

For non-imprisonable offences, Schedule 1. Part II. provides that the court need not grant bail where:

- a) there has been a previous failure to surrender, and the court believes that the defendant would again fail to surrender to custody (paragraph 2);
- b) the court is satisfied that the defendant should remain in custody for his/her own protection, or in the case of a child or young person, for his/her own welfare (paragraph 3);
- c) the defendant is already in custody serving a sentence (paragraph 4); or .
- d) the defendant, having previously been released on bail in the current proceedings, is arrested under s.7 for absconding or in breach of bail conditions (paragraph 5).

The general power of the court to impose requirements or conditions of bail is provided in s.3(6) of the Act which provides that either prior to or after release on bail the court may stipulate that the defendant must comply with certain requirements as appears necessary to the court to secure that he/she:

- a) surrenders to custody;
- b) does not commit an offence while on bail;
- c) does not interfere with witnesses or otherwise obstruct the course of justice;
- d) makes him/herself available for the preparation of reports or to enable enquiries to be made.

Appendix 2

Court Bail Survey

COURT:

DATE:

NAME OF STIPENDIARY/LAY JUSTICES:

NAME OF DEFENDANT/CODE:

NAME(S) OF CO-DEFENDANT(S)/CODE, IF ANY:

D.O.B.

SEX:

ETHNIC ORIGIN:

AFRICAN-CARIBBEAN/ASIAN/WHITE

FURTHER DETAILS (*e.g.* COUNTRY OF ORIGIN/NATIONALITY)

QUERY ON STATUS/HOME OFFICE INVOLVEMENT (GIVE DETAILS)

EMPLOYMENT, IF ANY:

FAMILY STATUS:

PHYSICAL APPEARANCE OF DEFENDANT (FOR VISUAL ASSESSMENT

INCLUDE MODE OF DRESS, HAIR STYLE *etc*):

GENERAL MANNER OF DEFENDANT (INCLUDE MANNER OF SPEECH):

LEGAL REPRESENTATION IN COURT:

REPRESENTED/NOT REPRESENTED

BARRISTER/SOLICITOR

AFRICAN/CARIBBEAN/ASIAN/WHITE

ASSESSMENT OF REPRESENTATION, IF ANY:

GOOD/BAD/ADEQUATE

COMMENTS:

NAME AND ADDRESS OF SOLICITOR:

CHARGE(S):

VALUE OF PROPERTY INVOLVED:

DETAILS OF VICTIM(S) (INCLUDE 'RACE', SEX AND APPROXIMATE

AGE):

OTHER DETAILS ABOUT CHARGE(S):

STAGE OF PROCEEDINGS:

PLEA:

ELECTION, IF ANY:

HISTORY OF BAIL APPLICATIONS RE. CURRENT CHARGE(S):

CONDITIONS 'OFFERED' BY DEFENDANT:

OBJECTIONS TO BAIL (GIVE DETAILS)/NO OBJECTIONS:

NUMBER OF PREVIOUS CONVICTIONS:

DETAILS OF PREVIOUS CONVICTIONS:

BAIL OFFENCES:

BAIL GRANTED/ REFUSED:

IF REFUSED, STATE GROUNDS:

CONDITIONS (GIVE DETAILS)/ NO CONDITIONS:

COMMENTS MADE BY BENCH, IF ANY:

IF BAIL REFUSED, STATE WHETHER APPEAL TO BE LODGED:

ANY OTHER INFORMATION OBTAINED ON CASE:

Appendix 3

Rating for Charges

RATING FOR CHARGE(S) value labels were calculated by making 1 year = 50 up to 500 (maximum 10 years); the next three value groups were increased by 100 until the highest group, 'life', where a rating of 7000 was given. A high score was given to this category to distinguish it from cases where a combination of several charges gave the defendant a high rating.

RATING FOR CHARGE(S) [in relation to maximum sentence]

5000-7000	life
800	maximum life
700	maximum 20 years
600	maximum 14 years
500	maximum 10 years
400	maximum 8 years
350	maximum 7 years
250	maximum 5 years
150	maximum 3 years
100	maximum 2 years
50	maximum 1 year
30	maximum 6 months
20	maximum 3 months
15	maximum 1 month
10	maximum fine only
5	alternative sentence/order made by the court
1	deportation
0	not known/not applicable

Appendix 4

List of Panel Members

Barristers called to the Bar for at least 5 years:

- 1 Sandra Graham, 14 Took's Court.
- 2 Peter Herbert, 15 Gray's Inn Square.
- 3 Liz Joseph, 2 Garden Court.
- 4 Ken MacDonald, 2 Garden Court.
- 5 Icah Peart, 2 Garden Court.
- 6 Edward Rees, Doughty Street Chambers.

Appendix 5

Degree of Severity/Restrictiveness of Bail Conditions

CONDITION:	SCORE* 1-100
1) avoidance of person	1) *
2) avoidance of place save to see solicitor by prior written appointment/attend court	2) *
3) avoidance of place (other)	3) *
4) bail hostel	4) *
5) curfew	5) *
6) not to apply for a passport	6) *
7) not to drive/sit in front seat of car	7) *
8) passport to be surrendered to/ retained by police	8) *
9) reporting to police station -daily	9) *
10) reporting to police station -twice weekly	10) *
11) reporting to police station -weekly	11) *
12) residence	12) *
13) security	13) *
14) surety	14) *
15) to be available as and when required to enable inquiries to be made	15) *
16) to give prior notice to police of any change of address	16) *

NAME OF BARRISTER:

Appendix 6

Bail Survey Form

DATE:

COURT: Highbury/Haringey

BENCH: Justices/Stipendiary

NAME OF DEFENDANT:

CODE:

D.O.B.:

RACE:Black/White

SEX: Male/Female

EMPLOYMENT:

FAMILY TIES:

ACCOMMODATION:

CHARGE(S):

CO-DEFENDANTS:

STAGE OF PROCEEDINGS:

CPS CASE:

OBJECTIONS TO BAIL/NO OBJECTIONS TO BAIL:

LEGAL REPRESENTATION:

DEFENCE CASE:

DEFENCE APPLICATIONS:

PLEA: Guilty/Not guilty

ELECTION TO CROWN COURT: Yes/no/not applicable/not known

HISTORY OF BAIL:

CONDITIONS 'OFFERED' BY DEFENDANT:

BAIL: Granted/Refused

IF GRANTED: Conditional/unconditional

CONDITIONS OF BAIL, IF ANY:

EXCEPTIONS TO RIGHT TO UNCONDITIONAL BAIL FOUND BY COURT:

REASONS FOR FINDING EXCEPTION(S) TO RIGHT TO UNCONDITIONAL BAIL
(IF ANY):

FULL BAIL APPLICATION ?

DECISION BY BENCH:

ANY OTHER INFORMATION:

Appendix 7

Key to Variables

[1] ACCOMMODATION (fixed address)

- 1 yes
- 2 no
- 3 unknown

[2] AGE

[3] AGE GROUP

- 1 under 14
- 2 14-17
- 3 18-20
- 4 21-25
- 5 26-30
- 6 31-35
- 7 36-40
- 8 41-50
- 9 51-60
- 10 61-70
- 11 over 70

[4] BAIL REFUSED ON FIRST APPEARANCE (before the court in the current proceedings):

- 0 bail refused
- 1 bail granted

[5] CASE NUMBER (in original survey data set)

[6] COURT

- 1 Highbury
- 2 Haringey

[7] EMPLOYMENT STATUS

- 1 employed
- 2 unemployed
- 3 unknown

[8] MOST SERIOUS CHARGE (class of most serious offence with which charged)

- 1 Serious violence and other Grave crimes: *e.g.* Aggravated burglary, Arson, Conspiracy to supply drugs, Criminal damage (major), Manslaughter, Murder, Possessing firearm or imitation firearm with intent to commit indictable offence, Rape, Threats to kill, S.18 GBH (Wounding with intent to do grievous bodily harm)
- 2 Blackmail/Robbery/ Kidnapping: including Administering poison with intent to injure, Assault with intent to rob, Conspiracy to rob, False imprisonment
- 3 Supplying drugs: *e.g.* Drugs- possession with intent to supply Class A
- 4 Sexual offences (other than Rape): *e.g.* Indecent assault on females
- 5 GBH (s.20 unlawful wounding)

- 6 Reckless driving (dangerous driving)
- 7 Public disorder: *e.g.* Affray, Criminal damage (minor), Threatening words or behaviour, Violent disorder
- 8 Household burglaries
- 9 Other burglaries and theft: *e.g.* burglary (non-dwelling), Going equipped, Taking a motor vehicle without authority, theft (shoplifting)
- 10 Fraud and handling: *e.g.* Conspiracy to defraud, Forgery, Obtaining property by deception, Receiving stolen goods
- 11 Minor violence: *e.g.* Assault on police, ABH (s.47 Actual bodily harm), Common Assault, Offensive weapon
- 12 Other offences: *e.g.* Carrying blade/point, Drugs - possession Class B, Failing to surrender, Taking motor vehicle without authority (allowing to be carried and knowingly driving)
- 13 Minor driving offences: *e.g.* Driving whilst disqualified, Driving while unfit, Excess alcohol, Failing to give breath specimen

[9] MOST SERIOUS OFFENCE WITHDRAWN (class of most serious offence with which charged withdrawn)
value labels as for (8) above

[10] NUMBER OF PREVIOUS CONVICTIONS

- 1 none/unknown
- 2 1–4
- 3 5 and over

[11] OFFENCE CHARGED COMMITTED WHILE ON BAIL

- 1 yes
- 2 no
- 3 unknown

[12] POLICE BAIL

- 1 yes
- 2 no
- 3 other

[13] PSYCHIATRIC CONDITION (brought to the attention of the court)

- 1 no
- 2 yes

[14] RACE

- 1 black
- 2 white

[15] RATING FOR CHARGES (for seriousness of charge in relation to maximum sentence for offence [Appendix 3] where indictable, maximum sentence on indictment; where more than one charge, total rating)

- 7000 Life
- 800 Maximum life
- 700 20 years
- 600 Maximum 14 years
- 500 Maximum 10 years
- 400 Maximum at large (usually at least 8 years)
- 300 Maximum 7 years

- 250 Maximum 5 years
- 150 Maximum 3 years
- 100 Maximum 2 years
- 50 Maximum 1 year
- 30 Maximum 6 months
- 20 Maximum 3 months
- 15 Maximum 1 month
- 12 Fine or alternative sentence
- 5 Alternative sentence/order
- 1 Recommendation for deportation
- 0 Unknown/not applicable

[16] RATING FOR CHARGES WITHDRAWN
value labels as for [15] above

[17] RATING FOR PREVIOUS CONVICTIONS
value labels as for [15] above

[18] REMANDED IN CUSTODY (at any time during the case)

- 0 not remanded
- 1 remanded

[19] SEVERITY RATING OF BAIL CONDITIONS (degree of restrictiveness of bail conditions – total given where more than one condition imposed)

- 0 0.00 none/not applicable
- 1 3.58 avoidance of person
- 2 5.92 avoidance of place save to see solicitor by prior written appointment/attend court
- 3 6.75 avoidance of place (other)
- 4 12.08 bail hostel
- 5 12.75 curfew
- 6 3.00 not to apply for passport
- 7 7.42 not to drive/sit in front seat of car
- 8 4.92 passport to be surrendered to/retained by police
- 9 13.00 reporting to police station – daily (or 5 times weekly)
- 10 10.17 reporting to police station – twice weekly (or 3 times weekly)
- 11 8.17 reporting to the police station – weekly
- 12 5.50 residence
- 13 12.50 security
- 14 11.92 surety
- 15 2.33 to give prior notice of any change of address

[20] TYPE OF BAIL GRANTED

- 0 not applicable
- 1 conditional
- 2 unconditional

[21] TYPE OF MAGISTRATE (before whom defendant appeared on first appearance in current proceedings)

- 1 lay justices
- 2 stipendiary

[22] TOTAL PROBABILITY OF REMAND IN CUSTODY SCORE ('TPRICS').

Appendix 8

Interview Schedules

(in alphabetical order)

Barrister:

- 1 Details of education, when qualified, current employment and areas of specialization.
- 2 Experiences as a black barrister.
- 3 Trends re: bail decisions, bail conditions, rates of remands in custody and criminal justice generally in relation to black people.
- 4 Problems relating to representation of legal aid cases.
- 5 Black role models.
- 6 The way forward for criminal justice and black people.

Crown Prosecution Service:

- 1 Current position and duties and composition of the CPS team attached to Highbury Corner Magistrates' Court.
- 2 The role of the CPS in the prosecution of offences and concerns about offending on bail.
- 3 Ethnic monitoring.
- 4 Factors influencing CPS objections to bail and the request for particular conditions assessing information on the defendant from the police and the Bail Information Scheme.
- 5 The role of the CPS where it is alleged that a breach of bail has occurred.
- 6 The over-representation of black people in remand prisons (given the large proportion eventually acquitted) reasons for this, including the strength of the objections to bail put forward by the CPS.

Defendants:

- 1 General background and education; family circumstances employment (if any) and accommodation.
- 2 Brief details of current alleged offence and details of previous convictions.
- 3 More details about current offence and any outstanding matters for which defendant is on bail.

- 4 Details about bail concerning the current offence; whether police bail granted; treatment in the police station; conditions of bail (if any) and how they affect the defendant.
- 5 If the defendant was remanded in custody-details about experiences on remand.

Lay Magistrate:

- 1 Details of how long and where served as a magistrate and occupational background.
- 2 Main factors involved in considering bail applications and imposing bail conditions.
- 3 The influence of the defendant having been refused police bail on the bail/remand decision.
- 4 Differential treatment of different ethnic groups, especially young black defendants, by the courts, and the over-representation of black people in custody.
- 5 'Race' awareness training for the judiciary and the magistracy.
- 6 The under-representation of minority ethnic groups among magistrates.

Police:

- 1 Current position and previous work in the police force.
- 2 The law and practice of police bail and the role of the custody officer.
- 3 Policing in Haringey – trends re: offences (for example, hard drugs), cautioning, and police initiatives.
- 4 Police community relations with specific reference to black people.
- 5 The recruitment of black officers.

Probation Officers:

- 1 Details of position held, when qualified, and duties undertaken.
- 2 Main problems encountered concerning black clients and how they should be addressed.
- 3 Observations on trends re bail decision-making by the courts and criminal justice generally in relation to black people.
- 4 Black role models.
- 5 The way forward for criminal justice and black people.

Solicitors:

- 1 Details of education, when qualified, current employment and areas of specialization.
- 2 Factors influencing the bail/remand decisions and experiences concerning bail applications and black defendants.
- 3 Trends re: bail decisions, bail conditions, rates of remands in custody and criminal justice generally in relation to black people.
- 4 Black role models.
- 5 The way forward for criminal justice and black people.

*For 'white solicitor, Stoke Newington' (acting on behalf of 'Michael', Highbury Case no. 116) only:

- *6 Details about "Michael's" case.

Appendix 9

Tables 7.3–7.17

Table 7.3: Combined defendants refused bail on first appearance by type of magistrate by race

	Race					
	Black refused bail on first appearance		Total black	White refused bail on first appearance		Total white
Type of magistrate	Row %		Row %			
Justices	27	(21.3)	127	21	(15.3)	137
Stipendiary	24	(23.1)	104	19	(20.0)	95
Totals	51	(22.1)	231	40	(17.2)	232

Table 7.4: Combined defendants: proportion remanded in custody by police bail by race

	Race					
	Black remanded in custody		Total black	White remanded in custody		Total white
Police bail	Row %		Row %			
Granted	5	(8.6)	58	2	(3.3)	61
Refused	21	(38.2)	55	23	(48.9)	47
Other	27	(22.9)	118	17	(13.7)	124
Totals	53	(100.0)	231	42	(100.0)	232

Table 7.5: Combined defendants: proportion remanded in custody by agegroup by race

	Race					
	Black remanded in custody		Total black	White remanded in custody		Total white
Agegroup	Row%				Row%	
Over 26	34	(26.8)	127	21	(18.9)	111
26 and over	19	(18.3)	104	21	(17.4)	121
Totals	53	(22.9)	231	42	(18.1)	232

**Table 7.6: Combined defendants: proportion remanded in custody
by most serious charge (re-coded to 4 main offence groups) by race**

	Race					
	Black remanded in custody		Total black	White remanded in custody		Total white
Most serious charge	Row %				Row %	
(a) Serious violence and other grave crimes/GBH S.20	11	(44.0)	25	10	(55.6)	18
(b) Blackmail/ Robbery/ Kidnapping/ Supplying drugs/ Public disorder	19	(22.4)	85	6	(11.3)	53
(c) Household burglaries/Fraud and Handling/ Minor violence/	16	(25.4)	63	11	(14.3)	77
(d) Other burglaries/Theft/ Sexual offences*/ Other offences	7	(12.1)	58	15	(17.9)	84
Totals	53	(22.9)	231	42	(18.1)	232

*Out of a total of 6 defendants charged with Sexual offences (other than Rape), none were remanded in custody

Table 7.7: Combined defendants: proportion remanded in custody by rating for charges by race

	Race					
	Black remanded in custody		Total black	White remanded in custody		Total white
Rating for charges	Row %		Row %			
1-600	11	(8.0)	137	18	(10.6)	170
601-7000	42	(44.7)	94	24	(38.7)	62
Totals	53	(22.9)	231	42	(18.1)	232

Table 7.8: Combined defendants: proportion remanded in custody by number of charges by race

	Race					
	Black remanded in custody		Total black	White remanded in custody		Total white
Number of charges	Row %		Row %			
One only	20	(17.7)	113	17	(12.8)	133
More than one	33	(28.0)	118	25	(25.3)	99
Totals	53	(22.9)	231	42	(18.1)	232

Table 7.9: Combined defendants: proportion remanded in custody by offence charged committed while on bail by race

	Race					
	Black remanded in custody		Total black	White remanded in custody		Total white
Offence charged committed while on bail	Row %		Row %			
Yes	15	(83.3)	18	16	(72.7)	22
No	29	(15.1)	192	13	(6.9)	189
Unknown	9	(42.9)	21	13	(61.9)	21
Totals	53	(22.9)	231	42	(18.1)	232

Table 7.10: Combined defendants: proportion remanded in custody by number of previous convictions by race

	Race					
	Black remanded in custody		Total black	White remanded in custody		Total white
Previous convictions	Row %		Row %			
None/unknown	36	(18.8)	192	29	(14.4)	201
1-4	11	(39.3)	28	9	(37.5)	24
5 and over	6	(54.6)	11	4	(57.1)	7
Totals	53	(22.9)	231	42	(18.1)	232

Table 7.11: Combined defendants: proportion remanded in custody by accommodation by race

	Race					
	Black remanded in custody		Total black	White remanded in custody		Total white
Accommodation	Row%				Row%	
Yes	47	(22.0)	214	37	(17.1)	22
No	4	(57.1)	7	4	(57.1)	189
Unknown	2	(20.0)	10	1	(12.5)	21
Totals	53	(22.9)	231	42	(18.1)	232

Table 7.12: Remands in custody: all defendants by court by race (expected frequencies in italics)

	Bail decision					
	Not remanded		Remanded		Totals	
Court		Col% Row%		Col% Row%		Col% Row%
Highbury	188 <i>185.2</i>	(51.1) (80.7)	45 <i>47.8</i>	(47.4) (19.3)	233	(50.3)(100.0)
Haringey	180 <i>182.8</i>	(48.9) (78.3)	50 <i>47.2</i>	(52.6) (21.7)	230	(49.7)(100.0)
Totals	368	(100.0) (79.5)	95	(100.0) (20.5)	463	(100.0)(100.0)

Chi-square=0.42 (df=1, p=0.518)

Table 7.13: Bail refused on first appearance: all defendants by type of magistrate by court

	Type of magistrate			
	Bail refused by justices	Total appearing before justices	Bail refused by stipendiary	Total appearing before stipendiary
Court		Row%		Row%
Highbury	12	(18.8)	29	(17.2)
Haringey	36	(18.0)	14	(46.7)
Totals	48	(18.2)	43	(9.3)

Table 7.14: Highbury defendants: proportion remanded in custody by race (expected frequencies in italics).

	Race					
	Black		White		Totals	
Remands in custody		Col% Row%		Col% Row%		Col% Row%
Not remanded	91	(78.4) (48.4)	97	(82.9) (51.6)	188	(80.3)(100.0)
	<i>93.6</i>		<i>94.4</i>			
Remanded	25	(21.6) (55.6)	20	(17.1) (44.4)	45	(19.3)(100.0)
	<i>22.4</i>		<i>22.6</i>			
Totals	116	(100.0)(49.8)	117	(100.0)(50.2)	233	(100.0)(100.0)

Chi-square=0.74 (df=1, p=0.389)

Table 7.15: Haringey defendants: proportion remanded in custody by race (expected frequencies in italics).

	Race					
	Black		White		Totals	
Remands in custody		Col% Row%		Col% Row%		Col% Row%
Not remanded	87	(75.7) (48.3)	93	(80.9) (51.7)	180	(78.3)(100.0)
	<i>90.0</i>		<i>90.0</i>			
Remanded	28	(24.3) (56.0)	22	(19.1) (44.0)	50	(21.7)(100.0)
	<i>25.0</i>		<i>25.0</i>			
Totals	115	(100.0)(50.0)	115	(100.0)(50.0)	230	(100.0)(100.0)

Chi-square=0.92 (df=1, p=0.337)

Table 7.16: Highbury defendants: proportion remanded in custody by age by race

	Race					
	Black remanded in custody		Total black	White remanded in custody		Total white
Age	Row%		Row%			
Under 25	11	(26.2)	42	11	(22.0)	50
25 and over	14	(18.9)	74	9	(13.4)	67
Totals	25	(21.6)	116	(20)	(19.1)	117

Table 7.17: Haringey defendants: proportion remanded in custody by age by race

	Race					
	Black remanded in custody		Total black	White remanded in custody		Total white
Age	Row%		Row%			
Under 25	18	(30.0)	60	7	(15.9)	44
25 and over	10	(18.2)	55	15	(21.1)	71
Totals	28	(21.5)	115	22	(19.1)	115

Appendix 10

Demography

The 1991 Census (Office for National Statistics, 1991) figures for Hackney only show the category 'white' which was used for the purposes of this analysis, whereas the Haringey figures show the categories 'white' and 'persons born in Ireland' which were combined as 'White' in Tables 3 and 4 below. Hackney *and* Haringey Census figures show the categories Black Caribbean, Black African, and Black other which were combined as 'Black' in Tables 1–4 below.

The total male general population 10–74 in Hackney (comprising white, 'black', Indian, Pakistani, Bangladeshi, Chinese and Asian racial groups) was 69,143.

Table 1: Hackney general population by race by age

	<i>Race</i>			
	Black		White	
	Percentage of population		Percentage of population	
Age				
10–24	4,750	6.8	10,933	15.8
25–74	9,649	14.0	36,089	52.2
Totals	14,399	20.8	47,022	68.0

Table 2: Hackney residents remanded in custody by race by age

	<i>Race</i>					
	Black			White		
	Percentage resident	Ratio over-represented in remands in custody		Percentage resident	Ratio under-represented in remands in custody	
Age						
10–24	6	13.3	2.0	2	4.4	0.28
25–74	8	17.8	1.3	5	11.1	0.21
Totals	14	31.1	1.5	7	15.5	0.23

The total male general population 10-64 in Haringey (comprising ‘white’, ‘black’, Indian, Pakistani, Bangladeshi, Chinese, Asian and Other racial groups) was 74,479.

Table 3: Haringey general population by race by age

Age	<i>Race</i>			
	Black		White	
	Percentage of population		Percentage of population	
10-24	4,089	5.5	13,946	18.7
25-64	5,649	7.6	43,159	58.0
Totals	9,738	13.1	57,105	76.7

Table 4: Hackney residents remanded in custody by race by age

Age	<i>Race</i>					
	Black			White		
	Percentage resident	Ratio over-represented in remands in custody		Percentage resident	Ratio under-represented in remands in custody	
10-24	12	24.0	4.4	3	6.0	0.32
25-64	6	12.0	1.6	5	10.0	0.17
Totals	18	36.0	2.8	8	16.0	0.21

Appendix 11

The Statistical Method of Logistic Regression

The logistic regression statistical technique employed was similar to that used by Hood(1992) in relation to his research on sentencing and race. The main aim of his research was to determine whether the race of the defendant was a variable which significantly effected the probability of receiving a custodial sentence when all other variables which have an effect on that decision have been controlled for (see Hood, 1992: Appendix 2, p 253; see also Appendix 9 'Logistic multiple regression model estimated for the remand status').

Essentially logistic regression can be described as a statistical method which regresses a dichotomous dependent variable on a set of independent variables (Fox, 1984; Norusis, 1990). In this research, the dichotomous variable was 'remanded in custody' which had two values: 0 = not 'remanded and 1 = remanded. Logistic regression analysis identifies subsets of explanatory variables that are good predictors of the response variable (Norusis, 1987: B-50). In order to do this, the main response (or dichotomous) variable 'remanded in custody' must be combined with a set of explanatory variables which were thought to significantly affect the bail decision.

The logistic regression model is expressed as follows in mathematical terms (see also Hood, 1992: 257) where r = 'remanded in custody':

$$\text{logit}(r_i) = \log(r_i / (1 - r_i)) = b_0 + b_1 x_{1i} + b_2 x_{2i} + \dots + b_k x_{ki}$$

The Accuracy of the logistic regression model

The logistic regression output includes a classification table for the main response variable 'remanded in custody' which indicates the accuracy of the fit of the logistic regression model (the final logistic regression analysis undertaken on 19 April 1994 took

approximately 15 hours to run). The classification table only shows whether the estimated probability of each predicted group is greater or less than 0.5 (see Norussis, 1987: B-44).

Appendix 11 table: Combined defendants: logistic regression classification for ‘remanded in custody’

	Predicted		Per cent correct
	Not remanded	Remanded	
Observed			
Not remanded	350	18	95.1
Remanded	37	58	61.1
			88.1(overall)

The above table shows an overall correct prediction of 88 per cent. Out of 368 defendants in the combined sample observed as not remanded in custody, the model correctly predicted 95 per cent cases as not remanded in custody and incorrectly predicted 5 per cent defendants as remanded in custody. The success rate for defendants observed remanded in custody was not so good, the model correctly predicting 61 per cent of defendants observed as remanded in custody. Taking both categories into account, the diagonal entries in the table show that the majority of cases in the combined sample , 88 per cent, were correctly classified by the model. The off-diagonal entries in the classification tables shows that 12 per cent of cases were incorrectly classified.

The overall correct prediction rate of 88 per cent in this research, therefore, resulted in a good fit. Hood notes that his logistic model on his whole sample based on 15 variables correctly predicted whether a case would receive custody or not in 75 per cent of the cases (Hood, 1992: 70) which was the same percentage as in another study using discriminant analysis on Crown Court sentencing data (Hedderman, 1991: 215). Hood also addressed the question of defendants remanded in custody at appearance for sentence and calculated a *Custody Remand Score* but this was based on the sample as a whole (Hood: 1992: 146–150 and Appendix 9).

theft), as compared to 4(2%) white defendants (0.4 per cent charged with Household burglaries, and 1 per cent charged with Other burglaries/Theft). This reflects the findings of the initial data analysis that where the 'most serious charge' was Household burglary, black defendants were at greater risk of being remanded in custody than white defendants (see Chapter 7).

It was also found that 8(89%) out of the 9 black defendants' TPRICS fell in the Low risk group, suggesting that black defendants were more likely to be remanded in custody even when other factors besides the seriousness of the offence charged militated against it. This finding conforms with the finding detailed Chapter 8 that black defendants were at much greater risk of being remanded in custody than white defendants in low risk cases.

Interpretation of logistic regression output

In order to interpret the output accurately the coefficients, columns in the output must be read in conjunction with each other (see Table 8.1.). The first column '**b**' relates to the Beta coefficient which indicates the values of the standardized regression coefficient and represents the effect that a standard deviation difference in the independent variable would have on the dependent variable in standard deviation (Hedderon and Fisher: 1992: 119). Where **b** is negative, it detracts from the risk of the event occurring, where **b** is positive it adds to the risk of RIC, and the nearer to 1 the higher the risk of the event occurring.

The second column '**df**' is the 'degrees of freedom' in relation to the significance level shown in the third column '**Sig.**'. The fourth column '**Exp(b)**' is the exponential of **b**, referred to by Hood as the 'odds multiplier', which for each variable shows the average impact of that variable on an individual case. Negative logistic coefficients produce an 'odds multiplier' of less than 1 which indicates that the probability level of the event occurring is diminished, whereas the larger the size of coefficient the greater the impact of that variable (see Hood, 1992: 257).

Misclassified cases

Some cases misclassified by the logistic regression model as 'not remanded' when they were, in fact, observed as 'remanded', were further investigated. Whether a defendant was classified as being remanded in custody or not was based on the TPRICS. If the score was more than 0.5 the case was classified as 'remanded', and if less than 0.5 as 'not remanded'. This rigid division could have meant that there may have been a substantial number of cases that fell only slightly above or below the 0.5 threshold which to some extent could have detracted from the validity of the classification. However, it was found that out of the whole of the combined sample of 463, only one case (Case no. 185 at Haringey - a black defendant charged with serious Criminal damage) came very close to the dividing line between 'remanded' and 'not remanded' with a TPRICS of 0.4931 which meant that it just failed to be classified as 'remanded'. Therefore, this case was classified as 'not remanded' because it was just below 0.5 but it was observed as 'remanded'. Overall, 55(12%) out of 463 cases in the combined sample were incorrectly classified by the logistic model (see Table 1 above). It was found that 18(4%) out of 463 were incorrectly classified as remanded in custody when they were observed as not remanded. This comprised 10(4%) out of 231 black defendants in the combined sample and 8(3%) white defendants out of 232.

In relation to the 37(8%) cases incorrectly classified as not remanded when they were observed as remanded in custody, this involved 24(10%) out of 231 black defendants as compared to 13(6%) out of 232 white defendants. The largest proportion of such defendants, over a third, were charged with Household burglaries, or Other burglaries/Theft. It was found that 13(35%) defendants out of the 37 defendants were incorrectly classified as *not remanded when they were observed as remanded* were charged with Household burglaries, or Other burglaries/Theft, and that a higher proportion were black defendants: 9(4%) black defendants in the combined sample (2 per cent charged with Household burglaries, and 2 per cent charged with Other burglaries and

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